TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM [redacted] 1962

No. [redacted] 25

WILLIAM PRESSER, PETITIONER,

vs.

UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 1, 1961
CERTIORARI GRANTED OCTOBER 23, 1961

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Criminal No. 23,276.

In the United States District Court

FOR THE NORTHERN DISTRICT OF OHIO,
EASTERN DIVISION.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

WILLIAM PRESSER,
Defendant.

DOCKET ENTRIES.

3/23/60. Indictment filed.

3/30/60. Motion of the defendant to return seized property and for the suppression of evidence filed. Copy acknowledged 3/30/60.

3/30/60. Motion of the defendant to dismiss the indictment filed. Copy acknowledged 3/29/60.

4/1/60. Defendant arraigned, plea of not guilty entered; briefs of defendant due Apr. 20, 1960; bond set at $3000.00 Jones, J. Reporter Czompoly.

4/1/60. Bond filed. (Summit Fidelity & Surety Co.)

4/1/60. Transcript of Court Reporter taken 4/1/60 filed. Reporter Czompoly.

4/20/60. Motion for dismissal of indictment with brief in support filed. Served 4/20/60.

4/20/60. Motion to dismiss on ground of double jeopardy, etc. with brief in support filed. (Exhibits 1 and 2 attached.) Copy served 4/20/60.

4/20/60. Motion of defendant to suppress and for return of evidence filed. Served 4/20/60.

4/20/60. Petition in support of motion to suppress with affidavit filed. Served 4/20/60.

4/20/60. Motion for inspection of records filed. Served 4/20/60.

4/29/60. Answer of U. S. A. to dismiss with brief filed. Copy served 4/29/60.

4/29/60. Answer and brief of U. S. A. to motion for return of property and suppression filed. Copy served 4/29/60.

4/29/60. Answer of U. S. A. to motion for inspection of records filed. Copy served 4/29/60.

5/5/60. Supplemental brief of defendant filed. Served 5/5/60.

5/6/60. Memorandum Opinion denying all motions to dismiss indictment filed, Jones, J. Copy Ake, Kiernan, and Corrigan.

5/6/60. Memorandum Opinion denying motions to suppress and for return of seized evidence and granting motion for inspection filed, Jones, J. Copy to Ake, Kiernan, and Corrigan.

5/11/60. Order denying defendant's motions to suppress and for return of evidence and denying motions to dismiss; further order that, upon motion to permit inspection of records available to Grand Jury of Dist. of Columbia, the evidence referred to by defendant in motions will not be suppressed nor returned, but granting opportunity of inspecting all papers furnished by Joint Council #41 filed, Jones, J. Copies to Kiernan and Corrigan.

5/12/60. Application of counsel for the defendant to withdraw as counsel of record filed.

5/12/60. Endorsed ruling granting defendant's counsel leave to withdraw as counsel of record, Jones.

5/13/60. Order granting application of defendant's counsel to withdraw as counsel filed, Jones, J. Copies to Kiernan and Corrigan.

5/31/60. Jury impanelled and sworn; trial in progress; adjourned until 10:00 a. m. tomorrow, Jones, J. Reporters Jarvela and Kitchen.

6/1/60. Trial to the Jury resumed but not concluded; trial in progress, adjourned until 10:00 a. m. tomorrow, Jones, J. Jarvela and Kitchen, Reporters.

6/2/60. Trial to the Jury resumed but not concluded; trial in progress, adjourned until 10:00 a.m. tomorrow, Jones, J. Reporters Jarvela and Kitchen.

6/3/60. Trial to Jury resumed but not concluded; adjourned until 1:00 p. m. next Monday, Jones, J. Reporters Jarvela and Kitchen.

6/6/60. Trial resumed and concluded; argument of counsel; charge by the Court; alternate jurors discharged; jury retired to commence its deliberations; adjourned until 10:00 a. m. tomorrow, Jones, J. Reporter Jarvela.

6/7/60. Jury deliberations resumed and concluded; verdict of guilty; defendant to remain on same bond until sentence, Jones, J. Reporter Jarvela.

6/7/60. Verdict filed.

6/7/60. Government's Exhibits 3-A, 3-B, 3-C, 4, 5-A, 5-B, 5-C, 6, 9, 10, 12, 13, 14, 15, 16, 17, 18-A, 18-B, 18-C, 18-D, 21, 22, 24, 29, 31, 32-A, 32-B, 33, and 34 received and filed. (Sh.)

6/7/60. Defendant's Exhibits A, B, C, D, E, F, and G received and filed.

6/8/60. Three (3) Government subpoenas returned and filed. Served Lethamay Lytle on 5/27/60; Donald F. Pfeiffer on 5/28/60; George H. Bender on 6/3/60.

6/9/60. Nineteen (19) Government subpoenas returned and filed. Served Charles Schaeffer on 5/19/60; served George Schenck, Aida Passalaqua, Ann Midio, Mary Lovano, Jay Donald Feder, and Michael E. Cozza on 5/20/60; Donald F. Pfeiffer on 5/23/50; Lillian Tavensky on 5/24/50; Hon. John L. McClellan, Hon. Walter J. Sheridan, Martin Fincun and James N. Kraemer on 5/25/60; Albert Young on 5/26/60; William Presser 5/27/60; Max B. Kessling, Grant L. Stease 6/2/60; Ray C. Bodmer, M. L. Estelle 6/3/60.

6/13/60. Motion for judgment of acquittal, or in the alternative, motion for a new trial with supporting brief by the Defendant filed. Copy acknowledged 6/13/60.

6/16/60. Answer of Government to motion for judgment of acquittal and for new trial filed. Copy served 6/16/60.

6/21/60. Application of defendant for leave to file supplemental brief on motion for judgment filed. (Brief attached.) Copy served 6/21/60.

6/21/60. Supplemental brief of defendant filed.

6/22/60. Application of defendant for continuance filed. Copy served 6/22/60.

6/22/60. Endorsed ruling granting application of defendant to continue appearance until June 24, 1960 at 2:30 p.m., Jones, J.

6/24/60. Memorandum Opinion denying motion for judgment of acquittal, or in the alternative, for new trial filed, Jones, J. (Opinion read in open court—copies handed to counsel.)

6/24/60. Sentence: Eight (8) months, not to run concurrently with any sentence heretofore imposed by any other Court; bond on appeal set at $3,000.00, Jones, J. Reporter Jarvela.

6/24/60. Bond on Appeal filed. (Summit Fidelity & Surety Co.)

6/27/60. Order that the motion of deft. for judgment of acquittal, or in the alternative, for a new trial is denied filed, Jones, J. Copies to Kiernan and Knachel.

6/27/60. Judgment and Commitment filed, Jones, J. 2 true copies to Marshal; one true copy each to Dist. Atty., Atty. Knachel, and Probation Officer.

7/1/60. Notice of appeal filed. Copy mailed to Frank Kiernan, Spec. Atty.

7/1/60. Copy of notice of appeal and copy of docket entries to Clerk, U. S. C. C. A. (6th).

7/6/60. Vol. 1 of the transcript of testimony filed. Jarvela, R.

7/6/60. Vol. 2 of the transcript of testimony filed. Jarvela, R.

INDICTMENT.

(Filed March 23, 1960.)

The Grand Jury charges:

1. From January 30, 1957, up to and including January 31, 1959, pursuant to Senate Resolutions 74, 88, and 221 of the 85th Congress, the Senate Select Committee on Improper Activities in the Labor or Management Field (hereinafter referred to as the "Committee") was authorized and directed to conduct an investigation and study of the extent to which criminal or other improper practices or activities are, or have been, engaged in in the field of labor/management relations or in groups or organizations of employees or employers, to the detriment of the interests of the public, employers or employees, and to determine whether any changes are required in the laws of the United States in order to protect such interests against the occurrence of such practices or activities, and was at all the times hereinafter mentioned duly conducting such investigation and study as the defendant William Presser well knew.

2. Pursuant to the rules of procedure adopted by the Committee on February 5, 1957, and in accordance with the aforesaid resolutions, the Committee Chairman or any other member of the Committee designated by him in writing was authorized and empowered to issue subpoenas for the attendance of witnesses and the production of memoranda, documents and records.

3. In accordance with the aforesaid resolutions and rules, the following subpoena was duly issued and served upon Teamsters' Joint Council 41, a labor organization (hereinafter referred to as Joint Council 41), Cleveland, Ohio, an affiliate of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, at the time and in the manner and means hereinafter set forth, as the defendant William Presser well knew:

> Subpoena No. L-3089, dated March 19, 1957, was duly served on Joint Council 41 on March 21, 1958, by personal service at Cleveland, Ohio on the de-

fendant, William Presser, president of said Joint Council 41.

This subpoena required Joint Council 41 to produce forthwith before the Committee, its records for the period January 1, 1949 to January 1, 1958 including cash receipts and disbursements books, ledgers, cancelled checks, check stubs, day books, paid bills, records of loans, correspondence files, memoranda, payroll records, minutes of meetings, records of all bank accounts, opened or closed and any other records relating to Joint Council 41, International Brotherhood of Teamsters.

4. On or about and between September 9, 1958 and September 13, 1958, the exact date to the Grand Jury being unknown, in the Northern District of Ohio, the defendant, William Presser, unlawfully, wilfully and knowingly did corruptly influence, obstruct and impede and corruptly endeavor to influence, obstruct and impede the due and proper exercise of the power of inquiry under which the Committee was conducting the aforesaid investigation and study, as more fully described in paragraph 1, herein, by the following act and acts:

(a) The defendant, William Presser did alter, deface and tear, and did partially destroy, conceal and withhold from the Committee an invoice of the Rudolph Deutsch Industrial Sales Company, dated December 8, 1955, designated by number 1670 and addressed to Teamsters Joint Council #41, well knowing that said invoice was a record of Joint Council #41 which bore a reasonable relation to the subject matter of the Committee's inquiry and was relevant to it, and was required to be produced to the Committee under and in accordance with the subpoena set forth in paragraph 3.

(b) The defendant, William Presser did conceal and withhold from the Committee an envelope with the notation "Christmas List" inscribed thereon and a memorandum containing a list of names with various items of merchandise or amounts of money written next thereto, well knowing that said envelope and memorandum were records of Joint Council #41 which bore a reasonable relation to the subject matter of the Committee inquiry and was relevant to it, and were required to be produced to the Committee under and in accordance with the subpoena set forth in paragraph 3 herein.

(In violation of section 1505, Title 18, United States Code.)

A True Bill

Foreman.

MOTION TO RETURN SEIZED PROPERTY AND FOR THE SUPPRESSION OF EVIDENCE.

(Filed March 30, 1960.)

Now comes the defendant and states that he is President of Cleveland Joint Council No. 41, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

That in response to subpoenas issued October 12, October 27, and December 21, 1959, by the United States Grand Jury of the District of Columbia, there was delivered to said Grand Jury the following records of Joint Council No. 41:

(1) Cash Disbursement Book for 1955.

(2) Check Stub Book for months December, 1955, and January, 1956.

(3) Cancelled checks for months, December, 1955, and January, 1956.

(4) Minutes of meetings held for years 1955 and 1956.

(5) All invoices, memoranda, notes and correspondence had with the Rudolph Deutsch Industrial Sales Company, of Cleveland, Ohio.

(6) Minute Book for the year 1958.

(7) Records showing travel of all officers for the period July 1, 1958, to December 31, 1958.

(8) Constitution and By-Laws of Joint Council No. 41 in effect since January 1, 1955.

(9) Cancelled checks for period August 1, 1958, to September 30, 1958.

(10) Cash Disbursement Book for period August 1, 1958, to September 30, 1958.

(11) Check Stub Book for period August 1, 1958, to September 30, 1958.

(12) All correspondence, bills, vouchers, invoices, memoranda and notes for period August 1, 1958, to September 30, 1958.

Defendant says that sometime during February or March, 1960, said records, without the knowledge or consent of the defendant, or of any other responsible official of Teamsters Joint Council No. 41, were unlawfully transported to Cleveland, Ohio, by persons whose names to this petition are unknown, and used by the Grand Jury of Cleveland, Ohio, as a basis for the indictment in this case. Defendant says that as President of said Teamsters Joint Council No. 41 he has the right to the possession of the records herein.

Defendant prays that said records be returned to him and that they be suppressed as evidence against him in any court proceeding.

Said records were transported out of Washington to Cleveland against his will and contrary to due process of law.

William J. Corrigan,
Fred W. Garmone,
Attorneys for Defendant.

MOTION TO DISMISS INDICTMENT.

(Filed March 30, 1960.)

The defendant moves that the Indictment be dismissed on the following grounds:

1. The defendant has been convicted of the offense charged therein in the case of the United States vs. William Presser in the United States District Court for the District of Columbia in Grand Jury Original terminated on March 18, 1960. A copy of said Indictment is attached hereto and marked "Exhibit A."

2-a. The indictment is uncertain, illogical, vague and indefinite, and does not set out with sufficient accuracy and particularity so as to inform the defendant of the crime charged against him.

2-b. It does not set out with any degree of certainty the date on which the alleged crime was committed.

2-c. The indictment contains contradictions. In Paragraph 4 it charges that the defendant "unlawfully, wilfully and knowingly *did* corruptly influence, obstruct and impede," and in the same paragraph it charges that the defendant "corruptly *endeavor* to influence, obstruct and impede."

2-d. There was no allegation in the Petition to support that the acts charged were done "corruptly."

s/ William J. Corrigan,
s/ Fred W. Garmone,
Attorneys for Defendant.

MOTION FOR THE DISMISSAL OF THE INDICTMENT.

(Filed April 20, 1960.)

Now comes the defendant and moves the indictment in this case be dismissed on the ground that it fails to charge an offense punishable under the provisions of Title 18 U. S. C. Sec. 1505.

s/ William J. Corrigan,
s/ Fred W. Garmone,
John H Garver,
Attorneys for Defendant.

MOTION TO DISMISS ON THE GROUND OF DOUBLE JEOPARDY AND BECAUSE THE DOCTRINE OF RES JUDICATA APPLIES.

(Filed April 20, 1960.)

Now comes the defendant and moves the dismissal of the Indictment on two grounds:

(1) on the grounds of double jeopardy, and

(2) because the doctrine of res judicata applies.

William J. Corrigan,
Fred W. Garmone,
John H. Garver,
Attorneys for Defendant.

MOTION TO SUPPRESS AND FOR RETURN OF THE EVIDENCE.

(Filed April 20, 1960.)

Now comes the defendant and moves that the records of Teamsters Joint Council No. 41, International Brotherhood of Teamsters, be returned to the said defendant, and for suppression of such records as evidence, for the reasons set forth in the Petition and Affidavit filed herewith.

William J. Corrigan,
Fred W. Garmone,
John H. Garver,
Attorneys for Defendant.

MOTION FOR INSPECTION OF RECORDS.

(Criminal Rule 16.)

(Filed April 20, 1960.)

Now comes the defendant and moves for an Order permitting him to inspect the records of Teamsters Joint Council No. 41 which were in the possession of the Grand Jury, District of Columbia, by order of subpoenas issued by said Grand Jury, and which records were removed from that jurisdiction without the knowledge and consent of the defendant to the jurisdiction of the District Court of the United States, Northern District of Ohio, Eastern Division.

Defendant further moves that he be permitted to make copies and photographs of such records as he deems necessary for his defense.

William J. Corrigan,
Fred W. Garmone,
John H. Garver,
Attorneys for Defendant.

MEMORANDUM ON: MOTION FOR THE DISMISSAL OF THE INDICTMENT; MOTION TO DISMISS ON THE GROUND OF DOUBLE JEOPARDY AND BECAUSE THE DOCTRINE OF RES JUDICATA APPLIES; MOTION TO DISMISS INDICTMENT.

(Filed May 6, 1960.)

JONES, *J.*:

Careful consideration has been given to the several motions filed by the defendant on April 20, 1960, together with briefs filed in support and contra, with the results noted below.

As to the motion respecting double jeopardy,—the indictment in Washington, D. C., growing out of the proceedings before the Senate Select Committee, charged unlawful refusal to answer a question; the indictment here charges that the defendant unlawfully, willfully and knowingly did corruptly influence, obstruct and impede and corruptly endeavor to influence, obstruct and impede the due and proper exercise of the power of inquiry by certain specific acts, particularly, altering, defacing and partially destroying and withholding from the Committee a certain invoice or record of Teamsters Joint Council No. 41 which bore a reasonable relation to the subject matter of the Committee's inquiry, and concealing and withholding an envelope and memorandum containing records of Joint Council No. 41 which bore a reasonable relation to the subject matter of the Committee's inquiry, and relevant to it.

The two indictments have no relation to each other on the facts. Conviction in the first cannot support double jeopardy in the present case. The same facts would not prove each case. In the earlier case the defendant was charged with negative conduct; in the present case, with affirmative action.

In respect to the motion to dismiss the indictment because the doctrine of res judicata applies, an examination of the matters referred to in the defendant's brief clearly shows that the matters which are the subject of consideration here were clearly not relevant to the consideration of the contempt question and that is well illustrated by the remarks of the Judge who tried the case. The matter respecting the defendant's connection with the papers referred to was not the subject of the indictment under which the defendant was tried and convicted in the Washington case.

Although I think the Government was over-zealous in undertaking to present this evidence in the Washington trial, nevertheless, the matters which the Government offered were not received by the Court and they did not enter into the consideration and decision of the Court in that case. This matter is not without difficulty but upon careful consideration of the arguments presented, it is my judgment that the motion in respect of res judicata can not be sustained.

Finally, respecting the motion for dismissal of the indictment on the ground that the indictment fails to charge an offense punishable under the provisions of Title 18, U. S. Code, Section 1505, the legislative history referred to in defendant's brief on this point concerns an extension of the scope of Section 1505 but does not concern the portion of Section 1505 involved in this indictment.

The points raised in the motion to dismiss, filed March 30, 1960, are wholly lacking in validity, as I think for obvious reasons. See Government's brief in opposition to motions to dismiss. A point in the motion filed March 30, 1960 which was not treated in the later motions is the question of lack of particularity as to the crime charged against the defendant in the indictment. On that point, it is my opinion, that the indictment is in greater detail and clarity than the usual return and completely informs the defendant of the precise unlawful conduct charged against him and upon which he is to be tried. He did or he did not unlawfully, wilfully, and corruptly obstruct and impede the proper exercise of the power of inquiry under which the Committee was conducting its investigation in that (a) he altered, defaced, partially destroyed and concealed a certain invoice, and (b) concealed and withheld from the Committee an envelope containing a memorandum, all records of Joint Council No. 41, and bearing a reasonable relation to the subject matter of the Committee's inquiry.

Accordingly, all of the several pending motions to dismiss the indictment filed by the defendant will be denied.

MEMORANDUM ON: MOTION TO RETURN SEIZED PROPERTY AND FOR THE SUPPRESSION OF EVIDENCE; MOTION TO SUPPRESS AND FOR RETURN OF THE EVIDENCE.

(Filed May 6, 1960.)

Jones, J.:

As to the motion to suppress and for return of evidence, I presume that the motion of March 30, 1960 is supplanted by a substantially identical motion of April 20, 1960. At any rate, the motions are denied for the reasons stated in the Government's brief in opposition thereto.

As to the defendant's motion to permit inspection of records available to the Grand Jury of the District of Columbia, I feel the defendant should have free access to all records supplied by Teamsters Joint Council No. 41, at a reasonable time to be agreed upon between Government's and defendant's counsel.

Accordingly, the evidence referred to by the defendant in his motions will not be suppressed nor returned, but an immediate opportunity of inspecting all papers furnished by Joint Council No. 41 is granted, as hereinbefore stated.

ORDER DENYING DEFENDANT'S MOTIONS TO SUPPRESS AND FOR RETURN OF EVIDENCE AND DENYING MOTIONS TO DISMISS.

(Entered May 11, 1960.)

Upon consideration,

It Is Ordered that defendant's motions to suppress and for return of evidence are hereby denied.

Further, It Is Ordered that, upon defendant's motion to permit inspection of records available to the Grand Jury of the District of Columbia, the evidence referred to by the defendant in his motions will not be suppressed nor returned, but an immediate opportunity of inspecting all papers furnished by Joint Council No. 41 is hereby granted.

Further, It Is Ordered that defendant's motions to dismiss are hereby denied.

/s/ Jones,

United States District Judge.

TRANSCRIPT OF TRIAL PROCEEDINGS

Before the Hon. Paul Jones, and a Jury, Commencing on Tuesday, May 31, 1960, 10:30 A. M.

APPEARANCES:

On behalf of the Government:

FRANK J. KIERNAN, ESQ.,
Special Attorney, Department of Justice.
HARRY LEE HUDSPETH, ESQ.,
Special Attorney, Department of Justice.

On behalf of the Defendant:

MESSRS. HORNBECK, KNACHEL, MCLAUGHLIN & RITTER BY
EDWIN KNACHEL, ESQ.,
JOHN G. CARDINAL, ESQ.

* * * * *

(35)

Thereupon the Government called as a witness JOHN L. MCCLELLAN, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION OF JOHN L. MCCLELLAN.

By Mr. Kiernan:

Q. For the record, Senator, would you please state your full name? A. John L. McClellan.

Q. You are a Senator from Arkansas, is that right, sir? A. I am.

Q. Senator, you are appearing here pursuant to a request by the Government and a Senate resolution which was passed authorizing you to appear and testify in this trial, is that correct, sir? A. That's correct. A request by the Government is a subpoena.

(36) Mr. Kiernan: Will you please mark this document Government's Exhibit 4 for identification?

(Document referred to was marked by the Clerk, Government's Exhibit 4, for identification.)

Q. I hand you what has been marked Government's Exhibit 4 for the purpose of identification, and I will ask you if that is the resolution authorizing you to appear?

The Court: You will have to keep your voice up, Mr. Kiernan, because there are other noises here.

A. This appears to be a correct copy of the resolution, and it is so certified by the Secretary of the Senate.

Mr. Kiernan: The Government offers Exhibit 4 in evidence, your Honor.

The Court: It may be received.

Q. Senator, for the benefit of the Court and jury would you give a brief sketch as to your background, with particular reference to your public service? A. You just want the official positions I have held?

Q. Well, sir, if you would go more generally into your background, what your training was, and then lead into your official positions? A. Well, do you mean my education?

(37) Q. Yes, sir, please. A. Well, I am a country product. I was reared in a little country town, received my education in the local schools, studied law in my father's office, later admitted to practice law. After serving in the First World War I opened law offices in the city of Malvern, Arkansas, and practiced law there for twenty years, during which time I served as City Attorney. In 1926 I was elected Prosecuting Attorney of that district, served two terms. I retired from politics temporarily. In 1934 I was elected to the Congress from that congressional district, the Sixth District of Arkansas, served two years, then made a campaign for the United States Senate and was defeated. I was out of office four years, then ran for the Senate again in 1942, and was elected, and I have served in the Senate for the last eighteen years.

Q. Now, sir, during the course of your service in the Senate of the United States, have you had occasion to serve on various committees? A. I have.

Q. And would these be fact-finding committees, sir? A. Well, one of the functions of all committees is fact-finding. There are committees established for specific purposes, sometimes, to make particular investigations, or to do particular work. I have served on both the (38) regular, and do serve on both the regular standing committees and special committees created for special purposes.

Q. And in the normal course of a special committee, it would be one created to conduct an investigation into a particular field, is that right, sir? A. Yes, committees are established for that purpose by either house of the Congress.

Q. Now, directing your attention to the years 1957-8-9, did you have occasion to serve on a committee which was investigating improper activities in the labor-management field? A. Yes, the Senate, I believe it was on the 30th or 31st of January, 1957, created a select committee charged with the duty of investigating improper activities in labor-management relations. It was composed of eight members, four Republicans and four Democrats, and I was chosen and served as chairman of that committee.

Q. And that committee was set up pursuant to a resolution of the Senate, is that correct, sir? A. It was.

Mr. Kiernan: Please mark these Government's Exhibits 5-A, 5-B and 5-C for purposes of identification.

(Documents marked by the Clerk, (39) Government's Exhibits 5-A, 5-B and 5-C for identification.)

Q. Senator, I will hand you what has been marked Government's Exhibits 5-A, 5-B and 5-C for purposes of identification, and ask you if you can identify them. Kindly just answer yes or no (handing exhibits to witness). A. Yes, I identify them as resolutions of the Senate, first establishing the Senate Select Committee on Improper Activities in Labor-Management Relations, and then extending the life of that committee, and the resolutions are so certified, accordingly, by the Secretary of the Senate.

Mr. Kiernan: May it please the Court, the Government offers Exhibits 5-A, B and C.

The Court: All right. They may be received.

Q. Now, Senator, these resolutions which have just been received in evidence, they were the ones passed by the Senate setting up your committee?

Mr. Knachel: Objection.

The Court: What is the objection?

Mr. Knachel: The objection is that these records speak for themselves.

The Court: Oh, well, that would (40) save reading them. He may answer.

Mr. Knachel: Exception.

A. That is correct.

Q. And they outline the general scope of authority of the committee and also the duties of the committee, is that correct?

Mr. Knachel: Objection.

The Court: He may answer.

Mr. Knachel: Exception.

A. They do.

Q. Now, Senator, could you state generally—and if you wish to refer to the resolutions you may—what the authority and the scope of the duties of the committee was?

Mr. Knachel: Objection.

The Court: He may answer.

Mr. Knachel: Exception.

A. These resolutions speak for themselves. Two of them were continuing resolutions, continuing the life of the committee. The original resolution is the one that vested the committee with powers and directed it to perform certain functions.

Q. I direct your attention particularly to Senate Resolution 74, Senator. A. Senate Resolution 74 of January 30, 1957, established a (41) committee, this committee, and authorized and directed it to conduct an investigation and study of the extent to which criminal or other improper practices are or have been engaged in in the field of labor-management relations, or in groups or organizations of employees or employers to the detriment of the interest of the public, employers or employees, and to determine whether any changes are required in the laws of the United States in order to protect such interest against the occurrence of such practices or activities.

The committee was further charged with the duty, "The Select Committee shall report to the Senate by January 31, 1958, inclusive, and shall, if deemed appropriate, include in its report specific legislative recommendations."

The life of the committee and the authority and duties imposed upon it were continued by subsequent resolutions, two of which you have here.

Q. Now in general, Senator, could you state some of the particular acts and practices which your committee looked into pursuant to this Senate resolution?

Mr. Knachel: Objection.

The Court: What is your objection?

Mr. Knachel: My objection is that anything he says from now on in would be (42) self-serving, your Honor.

The Court: No, they were public hearings, a matter of public record, what they investigated. How else could you establish what they did? I think it is within the realm of inquiry. You may answer.

Mr. Knachel: Exception.

A. The committee after organizing in accordance with the directions contained in the resolution employed a staff and a chief counsel, a professional staff of investigators and clerical staff. And it also used the services of other employees of the Government, employees in the General Accounting Office, employees in the Internal Revenue Bureau, and others, maybe, which we were authorized to do.

With this staff of employees and investigators the committee undertook to investigate and to make a study of practices that we might discover that we believed to be improper or there was reason to consider improper or criminal. They included the misuse of union funds, the misappropriation of funds.

They included racketeering and domination by interests outside of the union. They included lack of democracy in unions. They included the exploitation of workers, sometimes by union officials, sometimes by a (43) conspiracy between employer and union officials, and various aspects of that character.

In some instances investigation led to the possible influencing or attempts to improperly influence public officials. Also the enrichment at times of union officials at the expense of the union treasury.

Q. Now, Senator— A. I might add it also included what is known—an investigation in what is known as blackmail picketing, organizational picketing, secondary boycotts, and well—

Mr. Knachel: I move the answer be stricken.

A. We tried to cover all areas generally.

Mr. Knachel: I move that the answer be stricken.
The Court: It may remain.

Q. Now, Senator, under the resolution the committee was authorized to adopt certain rules, is that correct, sir? A. We were.

(Article marked for the purposes of identification as Government's Exhibit 6.)

Q. Senator, I will hand you what has been marked Government's Exhibit 6 for purposes of identification and ask you if you can identify it? A. This is the printed copy of the rules adopted by the (44) Senate Select Committee on Improper Activities in Labor-Management Field.

Mr. Kiernan: They are offered, your Honor.
The Court: Any objection? If not, they may be received.

Q. Now, Senator, under these rules the committee was authorized to issue certain subpoenas, is that correct, sir? A. Yes, sir. Not only under the rules but by the resolution it was so authorized.

Q. And the rules spelled out the manner in which the subpoenas would be issued? A. Yes. The Chair had authority to issue the subpoenas.

Q. Now in addition to the use of subpoenas what other methods did the committee use for purposes of performing its investigative function?

Mr. Knachel: Objection.

The Court: He may answer.

A. Well, by interrogating prospective witnesses, interrogating those whom we had some information about who might have knowledge of facts in which the committee would be interested. And also in making examination of documents and records that we thought might be pertinent to the inquiry and study.

(45) Then, of course, where after the staff had made this preliminary investigation, if on the basis of what they found and their report that committee concluded that public hearings should be held or executive hearings should be held in executive session, based upon the decision of the committee, we were governed and acted accordingly.

Q. Senator, you mentioned before that the committee hired a committee counsel. Directing your attention to the year 1958, could you say who the committee counsel was?

Mr. Knachel: Objection.

The Court: Is it material?

Mr. Kiernan: I believe so, your Honor, it will tie up.

The Court: You may answer.

A. Chief counsel of the committee in 1958 was Mr. Robert F. Kennedy.

Q. And he left the committee, sir, before the committee terminated, is that correct?

Mr. Knachel: Objection.

The Court: Is that material? Does it make any difference here who the attorney was?

Mr. Kiernan: It is of some materiality, your Honor. I won't press the (46) question, sir.

The Court: He may answer.

A. Mr. Kennedy served from the inception of the committee, from the time it was established, until either the latter part of August or early in September, and I believe it was the middle of September, 1959. He served as chief counsel of the committee during that period.

Q. And, to your knowledge, is he now a Government employee?

Mr. Knachel: Objection.

The Court: I still don't see any materiality. What's the use of taking up the time?

Mr. Kiernan: Possibly, if the Court please, the necessity for calling a witness or explaining why he is not called.

The Court: Well, if he is not available, go ahead, you may answer.

A. If Mr. Kennedy is in the employ of the Government at the present time in any capacity, I do not know it. My belief is that he is not.

Q. You do know Mr. Kennedy, Senator, is that correct?

Mr. Knachel: Objection, your Honor. May I have an objection to this line of inquiry?

The Court: Yes, I don't see how material it is.

(47) Q. In general terms, Senator, could you state what the duties of committee counsel were?

Mr. Knachel: Objection.

A. Yes, I can state what they were.

Q. Would you please, sir?

The Court: You may answer.

A. He had the duty of directing the staff and supervising the preliminary investigations and studies as they were made, so as to bring the information to the committee for its determination as to what should be done with it, whether it should be processed into public hearings, whether it should be discarded as of no particular value, whether it should be filed, and documents received and kept permanently; and also he had the duty and responsibility of determining what witnesses generally should be presented at the public hearings, after having briefed the committee with respect to the subject matters and information that was involved. He had the duty of presenting the testimony, both in executive sessions and also in public hearings, not to the exclusion, of course, of members of the committee, but generally to give it direction and to make the presentation.

Q. Senator, you also mentioned that there was an investigating staff. Could you in general terms state what the **(48)** duties of the investigators were?

Mr. Knachel: Objection.

The Court: He may answer.

A. They were to go out and inquire of prospective witnesses, or those who might have information, or who had knowledge of facts that would be pertinent to the committee's study and inquiry, and also to examine records and documents that might be of interest to the committee.

Q. With particular reference to the service of subpoenas, sir? A. They frequently served subpoenas, had subpoenas served on prospective witnesses.

Q. And with respect to possibly making arrangements for obtaining documents which had been subpoenaed? A. It would be their duty to do that.

Q. Senator, were these investigators subject to the direction of Mr. Kennedy? A. Primarily so, yes.

Q. Senator, the staff— A. And Mr. Kennedy was under the direction and supervision of the committee, and primarily under my direction and supervision as chairman.

Q. Among the investigators employed by the committee, sir, was there one named Walter Sheridan? A. There was.

(49) Q. Now, in addition to the committee office at Washington, D. C., did the committee establish various field offices in different sections of the country? A. We did establish some field offices on a temporary basis in some six or eight different towns, I believe, cities.

Q. And generally, the purpose or function of these field offices, sir? A. Well, it was thought practical to do it because staff members out in the field in a particular community or city conducting an extensive investigation in that area necessarily had to have office space and some headquarters or place to work. Usually someone would be in charge of that office, one of the staff members, and the office served as a convenience where we were undertaking to examine records, to have the records examined locally rather than to have them all produced in Washington. It was just of practical advantage to all parties concerned, not only to the committee, but usually to those prospective witnesses and those who were under investigation.

Q. Senator, among other organizations, did the committee have occasion to investigate the affairs of the labor organization popularly known as the Teamsters Union? A. It did.

Q. And in connection with the investigation of this
(50) organization, did it also look into the affairs of certain officials connected with the Teamsters Union, and other persons who were not necessarily officials but who were connected with the Teamsters Union? A. Yes.

Q. Now, Senator, directing your attention again to the 24th of March, 1958, did the committee issue an interim report? A. I do not recall the exact date, but along about that time we did file an interim report. The record will indicate the date of it.

Mr. Kiernan: Please mark this Government's Exhibit 7.

(Document marked by the Clerk, Government's Exhibit 7, for identification.)

Q. Kindly just answer yes or no, Senator. I will hand you what has been marked as Government's Exhibit 7 for purposes of identification, and ask you if you can identfy it? A. I can.

(Thereupon Mr. Kiernan handed Government's Exhibit 7 to Mr. Knachel.)

The Court: Do we have to wait until counsel reads ~~this~~ this whole thing over? Is there something specific you want (51) to direct attention to in there?

Mr. Kiernan: Yes, your Honor, I can limit it to a particular portion.

The Court: If counsel has the burden of reading through all of that and we have to sit here while he does that, I don't think we should do that.

Mr. Knachel: Well, I want to object to the admissibility of any part of this report.

The Court: Well, you can object to it. Direct the witness' attention to anything particular in there, if you want to offer it for any particular purpose.

Q. Senator, can you state whether or not the report contains special findings with respect to the Teamsters Union?

Mr. Knachel: Objection.

The Court: He may answer.

A. It did.

Q. Did the report also contain certain legislative recommendations of the committee? A. It does.

Mr. Knachel: Objection.

The Witness: I'm sorry.

(52) The Court: He may answer.

A. It does.

Mr. Kiernan: Your Honor, the Government offers the report, insofar as it pertains to the special findings and legislative recommendations of the committee.

Mr. Knachel: Objection.

The Court: Let's find out if they are pertinent to our issue here.

Mr. Kiernan: That would definitely be tied up, your Honor.

The Court: All right. Can you state that it has bearing on the matters we have under consideration?

Mr. Kiernan: May that be received, your Honor?

The Court: Is it a general report of conditions, or does it have some specific mention of matters related to the issue we have here?

Mr. Kiernan: I believe it has some specific relationship to the matters we have here, your Honor.

The Court: All right. You can produce that later, if necessary.

(53) Q. Directing your attention to Page 450 of the report, Senator, would you summarize briefly the legislative recommendations that the committee made at that time?

Mr. Knachel: Objection, your Honor.

The Court: You may answer.

A. The recommendations, legislative recommendations, are as follows:

1. Legislation to regulate and control pension, health and welfare funds.
2. Legislation to regulate and control union funds.
3. Legislation to insure union democracy.
4. Legislation to curb activities of middle men in labor-management disputes.
5. Legislation to clarify the "no man's land" in labor-management relations.

Those are the five specific recommendations.

Mr. Knachel: I move that the answer be stricken, your Honor.

The Court: It may remain.

Q. Senator, from your familiarity, generally, with the procedures, or the legislative procedures, are reports of this type public information? A. They are when filed with the Senate as a report. They become a Senate document, and as such, they are public **(54)** information.

Q. From referring to Government's Exhibit 7 for purposes of identification, Senator, could you tell whether or not it has been referred to the Senate? A. Whether it has been referred to the Senate?

Q. That's right, sir. A. It wasn't referred to the Senate. It was filed in the Senate by me as chairman of the committee, and by direction of the committee, as the interim report of the committee. It is a Senate document.

Q. And therefore, sir, did it become a public record? A. It did.

Q. Could you state approximately at what date it became a public record? A. At the date of filing, copies were printed and readied for distribution immediately upon it being filed.

Q. Does this report indicate the date of filing? A. It was filed on the 24th day of March, 1958. The legislative date was March 17th, the calendar date on which it was filed was March 24th.

Mr. Kiernan: May it please the Court, the Government again offers Exhibit 7 in evidence.

Mr. Knachel: Objection, your Honor.

The Court: It has been received, (55) hasn't it?

Mr. Kiernan: I wasn't certain that it has been received.

The Court: I think so, insofar as it is pertinent to our issues.

Q. Senator, again directing your attention to the year 1958, did the committee have occasion to conduct certain investigations in the State of Ohio? A. It did.

Q. And in connection with these investigations do you know whether or not a special office was set up in Cleveland? A. I believe we had a special office here. You call it a special office, I believe we had a field office here for a period of time. I do not recall how long a period.

Q. Could you state generally, sir, whether or not the committee issued subpoenas for the production of books and records of various businesses and labor organizations in Ohio in connection with its investigation? A. It did.

Q. And do you know whether or not it followed the usual procedure in these cases of allowing the books and records to be turned over to the field office?

Mr. Knachel: Objection, your Honor.

The Court: Well, if he has knowledge of it he may answer how it was done.

(56) A. I was not actually present. I did not see the actual delivery of books and records to the field office, but from books and records that were finally produced before the committee they came through the field office.

Q. Now in the State of Ohio, Senator, among the other businesses and organizations did the committee undertake an investigation of various locals and affiliates of the Teamsters Union?

Mr. Knachel: Objection.

The Court: He may answer.

A. It did.

Q. And in connection with this investigation did it also issue subpoenas? A. It did.

Q. To those various locals?

Mr. Knachel: Objection.

The Court: He may answer.

Q. Now, sir, directing your attention to the latter part of the year 1958, August the 7th, did it come to your attention that the Teamsters Union had established what is alternatively called an anti-racketeering committee or anti-racketeering commission?

Mr. Knachel: Objection, your Honor.

The Court: I don't believe I quite understand that question. Will you (57) read it again?

(Reporter read-back the last question asked of the witness.)

The Court: Now, what was that? In the form of a resolution or just verbally or what? What was it, Mr. Kiernan? What is the nature of it?

Mr. Kiernan: The nature of my question, your Honor, or the nature of the committee?

The Court: What was the nature of this matter that you are inquiring of the Senator about that came to his knowledge? What course did it take? Was it a resolution adopted by the Teamsters Union?

Mr. Kiernan: No, your Honor. We will develop how it came to his attention.

The Court: I don't believe I quite get the point.

Mr. Kierman: To explain the point, the particular organization had nothing directly to do with the committee. It was an organization formed within the framework of the Teamsters Union itself.

Mr. Knachel: Well, I object to this, (58) your Honor. I know nothing about it.

Mr. Kiernan: This is by way of background.

The Court: How would that be material here and relevant to our matter?

Mr. Kiernan: We would expect to develop that.

The Court: Well, what difference would it make if the Senator did hear about it?

Mr. Kiernan: To the extent it might have some bearing on the future of the investigation.

The Court: I think I will sustain the objection to it. I don't see that it is material.

Mr. Knachel: Will the Court instruct the jury to disregard it?

The Court: Well, there was nothing said so there was nothing to disregard.

Mr. Knachel: Well, the question.

The Court: The Court thinks the question is not relevant to the matters here under consideration. The jurors will disregard it.

Q. Senator McClellan, the committee was interested in the expenditures of union funds, I believe you have testified, (59) is that correct, sir? A. That is correct.

Q. Did it come to your attention in August of 1958 that the Teamsters Union intended to expend funds in a particular matter?

Mr. Knachel: Objection.

Q. Having to do with a so-called cleanup committee?

Mr. Knachel: Objection, your Honor.

The Court: Well, would that be hearsay evidence? How did he hear it? I just don't quite get the purpose of it.

Mr. Kiernan: Information which would come to the attention of any investigative body would of necessity be hearsay, but it would give rise to that investigative body's subsequent decision to look into a particular matter.

The Court: You mean that was the basis for your inquiry?

Mr. Kiernan: That is right.

The Court: He may answer.

Mr. Knachel: Objection.

The Witness: Would you read that back?

(Reporter read back the last question asked of the witness.)

(60) A. It did. I am not sure about that date, but in that area of time it did come to my attention.

Q. And do you recall how it came to your attention? A. I do. You mean when it first came to my attention?

Q. Yes. A. I do.

Q. Would you state how it came to your attention?

Mr. Knachel: Objection, your Honor.

The Court: He may answer.

A. The attorney for the Teamsters Union, Mr. Edward Bennett Williams called me and asked to have a conference with me. I had a conference with him.

At that time he told me they were appointing a committee or a commission—I have forgotten which he said—but a committee, I think, of three to make an investigation of the Union and corruption and practices within it. That commission or committee was being appointed by Mr. Hoffa, he said, as President of the Union, Provisional President of the Union.

And within two or three hours or an hour or two after this conference it became a matter of news in the public press. Mr. Williams advised me that he wanted to acquaint me with what they proposed to do in advance before the press broke the story. That is how it first came to my attention.

(61) Mr. Knachel: I move that the answer be stricken.

The Court: It may remain.

Q. Now, Senator, was the establishment of this committee or commission a matter of interest to your committee?

Mr. Knachel: Objection.
The Court: He may answer.

A. It was.

Q. Could you state generally in what respect it was a matter of interest?

Mr. Knachel: Objection, your Honor.
The Court: He may answer.

A. Mr. Hoffa had previously testified before the committee and he had promised the committee that he would undertake to clean up the improper practices that we thought prevailed and did prevail in the Union.

He had been asked about it later. Apparently nothing had been done. Then this committee was appointed ostensibly for that purpose.

In view of that naming of this committee, and the personnel of it and the expense that was going to be involved in it, the committee did have an interest in pursuing it, looking into it to ascertain just what was taking place.

Mr. Knachel: I move that the (62) answer be stricken.

The Court: It may remain.

Q. Could you state who the chairman of that committee was, sir?

Mr. Knachel: Objection.
The Court: Is that material?
Mr. Kiernan: I believe so, your Honor.
The Court: Is it on the issue we have here? Does it get to the meat of the matter?

Mr. Kiernan: Yes, it does.
The Court: All right. He may answer.
Mr. Knachel: Exception.

A. Former Senator George Bender, I believe, was the chairman.

Q. And are you acquainted with Senator George Bender?

Mr. Knachel: Objection.
The Court: He may answer.

A. I am.

Mr. Knachel: Your Honor, may I have an objection to all this line so I won't have to be jumping up and down?

The Court: Yes. The record will (63) so show.

Q. Could you state when he was a Senator? A. I believe he came to the Senate, he was elected in 1954. I am not certain about that. It was either '52 or '54, as I recall.

Q. And do you recall approximately how long he served? A. I think he served until January 1959, if I am not mistaken.

Q. But you could possibly be mistaken? A. '58, maybe.

Q. You are not certain of that answer? A. I am not certain about the terms unless you look at the record of any senator how long he served. I know he served during the period from 1954 up until '58 or '59. '58 I think would be correct.

Q. How did certain rumors or reports come to the attention of your committee which caused it to look into the relationship between George Bender, the chairman of the cleanup committee, and various officials of the Teamsters Union which he was allegedly going to clean up?

Mr. Knachel: Objection.

The Court: I will sustain the objection to that. I don't see any materiality to it. Did rumors come to them? Ask him what the Senator did.

(64) Mr. Knachel: May I say, your Honor, aren't we sometime during this trial going to have any witness to testify directly rather than all this hearsay?

The Court: Well, I have sustained the objection, Mr. Knachel, to that question. I think it is wholly irrelevant and immaterial that they received rumors. What did they do? What did the committee do.

Q. Senator, did the committee cause an investigation to be made into the relationship between Senator Bender and various officials of the Teamsters Union which he was supposed to clean up? A. There was some investigation made in that area, yes.

Q. And in connection with that investigation was committee investigator Walt Sheridan sent into the State of Ohio to look into some books and records in various organizations?

Mr. Knachel: Objection.
The Court: He may answer that.
Mr. Knachel: Exception.

A. Mr. Sheridan was one of the regular investigators of the committee at that period of time, and there had been investigation underway here in the State of Ohio. After this development he also pursued some investigation of the (65) situation that was indicated by reason of the appointment of this committee.

(Article marked for the purposes of identification as Government's Exhibit 8.)

Q. Senator, I will hand you what has been marked Government's Exhibit 8 for purposes of identification and ask if you can identify it? Kindly just answer yes or no. A. Yes, I can identify this.

Q. Could you state what Government's Exhibit 8 is, sir? A. It is Volume 40 or Part 40 of the Public Hearings conducted by the committee, the printed transcript of the public hearings.

Q. Senator, directing your attention to Page 15145, will you state whether or not Mr. Sheridan appeared as a witness before the committee? A. Well, Mr. Sheridan did appear as a witness before the committee.

Q. And the date of that appearance was what, sir? Well now, this record covers the dates September 11, 15, 16, 17, and 18, and November 17, 1958. It was on one of those dates. It would take a minute to find the exact date, if that is what you desire.

Q. Would you, please, sir? A. Beg pardon?

Q. Would you kindly? **(66)** A. Well, I will have to go back.

(Witness examining exhibit.)

A. It appears that he testified on the date of September 17, 1958. That is one of the occasions on which he testified before the committee.

Q. And you were present on the occasion of September 17, 1958, when Mr. Sheridan testified, were you, sir? A. I was.

Q. Now, if necessary, Senator, you may refresh your recollection by making reference to this document. Could you state whether or not Mr. Sheridan testified concerning a visit that he had made to Cleveland in the previous week?

Mr. Knachel: Objection.

The Court: Can't the witness Sheridan himself testify that he made this visit?

Mr. Kiernan: Yes, he could.

The Court. Why do you have to go into the record of testimony that he made?

Mr. Kiernan: I am trying to avoid recalling the Senator. Before we get certain matters in evidence directly I would like the Senator to be able to testify as to their pertinency.

Mr. Knachel: I object.

(67) Mr. Kiernan: It is merely a matter of the order of proof which is discretionary with the Court.

The Court: Well, there is some merit to it. Of course the Government must prove that these matters were pertinent to their inquiry, that they bore a reasonable relation to the matter under investigation, and that is rather difficult to prove except in the way that it is being done.

That was one of the elements of the offense that these were matters which the committee had under investigation and they were relevant and pertinent to their inquiry and that they were entitled to the records and papers which are the subject of this lawsuit in connection with that inquiry. I assume that is the basis?

Mr. Kiernan: That is it.

The Court: I will permit the Senator to answer.

Mr. Knachel: Your Honor, it would seem to me that you try a lawsuit by subpoenas issued and the witness that they served them on.

The Court: This is a matter of public record. This isn't hearsay, it is a matter (68) of public record.

Mr. Knachel: That record isn't in evidence.

Mr. Kiernan: The record is being used to refresh the witness' recollection.

The Court: Well, I think it ought to be in evidence.

Mr. Knachel: Well, I object.

The Court: If the witness is to use it, then it becomes available for any purpose in the trial.

Do you want to make it a part of your case and have it marked and then the Senator can save us the trouble of reading it and he can read it to us?

Mr. Kiernan: As far as the Government is concerned, we will either offer it in evidence or we will insist as it standing for what it is and the Senator may use it to refresh his recollection.

Mr. Knachel: To both I object.

Mr. Kiernan: To suit the convenience of the Defense attorney we will offer it.

The Court: Very well. We will receive it in evidence.

(69) The Witness: What is the question?

Mr. Kiernan: Would you strike my pending question, please?

Q. With particular reference to Joint Council 41 of the Teamsters Union, did Mr. Sheridan testify concerning a visit he had made there in the second week of September of 1958?

Mr. Knachel: May I have an objection to all of this for my record?

The Court: Yes, the record may show an objection to this line of inquiry.

A. Mr. Sheridan did testify regarding a visit he made about that date—I don't have the exact language before me, I would have to search to find it. But he did testify about a visit he made to the headquarters of Joint Council 41, and about examining some records there and about leaving them there for them to be photostated before removed, and about returning for them some three days later. He did testify regarding that incident.

Q. Now, sir, did he testify concerning a particular set of documents where they were contained in an envelope marked "Christmas List"? A. He testified—

Mr. Knachel: My objection covers (70) all this, your Honor?

The Court: Yes. Can you find that in the record?

Mr. Kiernan: Yes, your Honor, it is in the record.

Mr. Knachel: My objection covers this line of inquiry.

The Court: Why don't you get it before him?

The Witness: I can read this testimony.

The Court: Well, read it.

Mr. Kiernan: May I approach the bench?

The Court: Yes.

(Conference between Mr. Kiernan and the Court.)

The Court: Tell the Senator that what you are interested in knowing is what Mr. Sheridan testified as it relates to the knowledge the committee had of the pertinency of this matter. That's what I assume you are trying to do.

Mr. Kiernan: Yes, sir.

Q. Do you recall the testimony of Mr. Sheridan? (71) A. I recall it in general. I think there is about three or four pages here of Mr. Sheridan's testimony that I can read if you wish to have me read it.

Q. May I examine it first, Senator? A. I believe this is what you want (indicating).

Q. Would you read it, Senator, but make reference to the testimony of no other witness than Mr. Sheridan?

> Mr. Knachel: My objection covers this also?
>
> The Court: Yes, you can have your objection.

A. At this point in the record Mr. Sheridan was a witness and testified. Mr. Kennedy, who was chief counsel was interrogating him and I also interrogated him, and I will indicate as I read by whom the question was propounded and the answer given by Mr. Sheridan:

> "Mr. Kennedy: Mr. Sheridan, would you give us the situation?
>
> Mr. Sheridan: On September 9, 1958, I received the correspondence files of Joint Council 41. I noted among the files an envelope which contained several pieces of paper, several documents, invoices, and the envelope was marked 'Christmas List' and all of the documents referred to Christmas (72) presents purchased by Joint Council 41 for various individuals. I made notes concerning one of these documents, and I have my notes here. Do you want me to read them?
>
> The Chairman: All right. You examined the original documents?
>
> Mr. Sheridan: Yes, sir, I did, Senator.
>
> The Chairman: All right, proceed.
>
> Mr. Sheridan: My notes read as follows: September 9, 1958 Christmas List.
>
> The Chairman: Is that for next Christmas?
>
> Mr. Sheridan: No, it is the abbreviation for Christmas.
>
> The Chairman: I was wondering which Christmas.

Mr. Sheridan: I was taking notes relative to an invoice which is Invoice No. 1670 from the Rudolph Deutsch Industrial Sales Company.

The Chairman: What is the date of it?

Mr. Sheridan: The date is December 8, 1955, Second Floor, Bulkley Building, (73) Cleveland, Ohio. In the right-hand top corner of the invoice there were two telephone numbers, Main 1-2880 and Main 1-7875 and the name Mrs. Roman. These numbers are reported in my notes. The invoice refers to eight Champagne Masters.

The Chairman: Eight what?

Mr. Sheridan: Eight Champagne Masters.

The Chairman: What is a champagne master?

Mr. Sheridan: I do not know, sir. Priced at $100 apiece, total amount $800.

The Chairman: What?

Mr. Sheridan: The total amount of the cost of the champagne Masters was $800.

The Chairman: Eight of them, $800?

Mr. Sheridan: No, eight at $100 each for a total of $800.

The Chairman: That is what I mean.

Mr. Sheridan: The state tax was $25 for the total of $824. This invoice had on the left side of the invoice a list of names.

The Chairman: How many names?

Mr. Sheridan: Eight names, being the (74) eight people to whom the champagne masters were to be delivered. The names were as follows: Beck, English, Hoffa, Brennan, Connell, Bender, Bliss, and Dorfman.

The Chairman: Dorfman?

Mr. Sheridan: Dorfman.

The Senator: Does that make eight names?

Mr. Sheridan: Eight names. The invoice also contains the notation that the bill was paid by check No. 8302 on December 29, 1955.

The Chairman: Check number what was that?

Mr. Sheridan: 8302, dated December 29, 1955.

The Chairman: December 29, 1955?

Mr. Sheridan: Yes, sir.

The Chairman: What happened to that invoice?

Mr. Sheridan: I left the invoice, along with the correspondence which I requested from Mr. Presser, because he told me he wanted to photostat anything we were taking. So I returned three days later to pick up the (75) photostatic material. Mr. Presser did not have the photostat material, but he gave me the original documents which I asked for. I looked through the documents and noticed that the envelope I referred to was missing. A sheet of yellow paper—I believe it was yellow paper—that there were names on corresponding to the names of this invoice was also missing. The invoice itself which is right here had been torn in such a manner as to remove the names of the people listed.

The Chairman: Do you have there the remnants in your hand of the original invoice about which you have testified?

Mr. Sheridan: I do, sir.

The Chairman: That remnant may be made Exhibit No. 184.

(The remnant referred to was marked Exhibit No. 184 for reference and will be found in the Appendix on page 15349.)

The Chairman: Now, as I understand you, when you first examined this invoice there was nothing torn off of it?

Mr. Sheridan: That is correct.

The Chairman: And the notes from (76) which you have testified were made at the time that you first examined it?

Mr. Sheridan: That is correct.

The Chairman: Three days later when you went back to get the photostatic copy of it you found it in this condition?

Mr. Sheridan: Yes, sir.

The Chairman: What was torn off of it?

Mr. Sheridan: The eight names that I read off to you.

The Chairman: They had been torn off?

Mr. Sheridan: Yes, sir."

Q. That's sufficient, Senator, thank you.

Now, Senator, directing your attention again to the middle of page 15164 where Mr. Sheridan read off the eight names, would you refer to the names that are listed there and tell the Court and jury which, if any, of those names were a matter of concern to the committee at the time of this particular hearing?

Mr. Knachel: That's objected to, your Honor.

The Court: He may answer.

A. Well, Mr. Beck had been of concern to the committee.

(77) Q. Would you state who he was? A. Well, Mr. Beck—

Mr. Knachel: Objection.

A. Mr. Beck was—

Mr. Knachel: Wait a minute. Your Honor, I object.

The Court: Oh, I didn't hear you. Well, he may answer that.

Mr. Knachel: May I have an objection to this line of inquiry relative to names, and so on?

The Court: Yes, you may so have the record show.

A. Mr. Beck we identified as being Mr. Dave Beck who was formerly President of the International Brotherhood of Teamsters. Mr. English—

Q. Sir, do you know what Mr. Beck's status was at the time of this hearing? A. At this particular time Mr. Beck had—I think he was not president any longer. Whether he had any official status with the Teamsters at this particular time, I do not know. I think he was still drawing his—

Mr. Knachel: I object to all this, your Honor. Is this question directed to March of 1955, or what?

(78) The Court: I don't know.

Mr. Kiernan: The question is clearly directed to 1958 at the time that the hearing was held, at the time that the document allegedly was destroyed.

A. At the time the hearing was held Mr. Beck had been succeeded as president of the International Union by Mr. Hoffa as Provisional President.

Q. Do you know— A. Mr. English was and still is, if you want me to finish the answer—

Q. Well, do you know whether or not Mr. Beck had at that time been prosecuted for any violations of the law in connection with his Union activities?

Mr. Knachel: Objection.

The Court: Objection sustained. I don't see what materiality it has.

Mr. Kiernan: I believe, sir, the interim report of the committee definitely shows that it was of material concern to the committee, and that concern was evidenced in March of 1958, some four or five months before this particular incident, and before this particular hearing.

The Court: What materiality would (79) that have that would affect the matters that we have here?

Mr. Kiernan: May it please the Court, the Senator has already testified, if memory serves me correctly, that the committee was interested in the relationship between various officials of the Teamsters Union and people who may or may not have had a criminal record, or bore an unsavory reputation. That very definitely would be a material matter in the Government's case, and the matter was one of public record at the time that this hearing took place. It had been made a matter of public record when the interim report was issued, and that matter should have been known—it was, naturally, known to the Senator and should have been known to all people concerned.

The Court: Was that a matter, Senator, that the committee was interested in, the fact that the bucket was being sent to Beck who formerly had been the head of the Teamsters Union?

The Witness: Well, at the time the bucket was sent in 1955 he was president at that time of the International Union.

(80) The Court: Was there any great to do about one officer sending a bucket to another officer?

The Witness: Well, it wasn't a question of one officer sending a bucket to another officer, it is a question of using union dues money for such purposes.

The Court: For that purpose?

The Witness: Yes, sir.

The Court: On that basis, I will hear it.

Q. You may continue. A. Mr. English was at that time and still is, I believe, Secretary-Treasurer of the Teamsters Union, the Brotherhood of the International Teamsters Union. Mr. Hoffa has since become Provisional President. At that time he was President, I believe, of the Central Conference of Teamsters and also of one local. I believe it was Local 299, and is still president of it, and I think he had other official positions in the organization of the Teamsters Union. Mr. Brennan, I believe, was Vice President of the International Union of Teamsters, at that time, and was also President of a local. Mr. Connell I did not know. Mr. Bender, of course, was at the time this testimony was taken a former United States (81) Senator. In 1955, I believe, at the time of the incident of the invoice, I believe he was a United States Senator. Mr. Bliss I did not know. Mr. Dorfman was identified in hearings that we had previously held as being connected either directly or indirectly—I believe his wife and his son operated an insurance agency, or an insurance company, that had considerable business from the Teamsters Union. Those are the facts as I know them.

Q. With respect to Mr. Paul Dorfman, I direct your attention to page 449 of Government's Exhibit 7, the interim report, and ask you if particular reference was made to that individual in the interim report?

Mr. Knachel: Objection, your Honor.

The Court: He may answer.

A. Well, the interim report has been made a part of the record.

Q. Yes, Senator. A. On page 449 of the interim report there is reference made to Paul Dorfman.

Q. Read what the reference is, please, Senator. A. Well, beginning at this point, without going back—I don't know how far back you would like for me to go:—

> "Or Paul (Red) Dorfman, who reached ascendancy in the Chicago labor movement after the murder of (82) his predecessor and who has maintained a continuous association with Chicago mobsters."

That is what is specifically mentioned about Mr. Hoffa in the interim report.

Q. Mr. Dorfman, you mean. A. Dorfman.

The Court: What is that name?

The Witness: D-o-r-f-m-a-n.

Mr. Knachel: I move to strike the answer.

Q. To clarify the record, Senator, was it a matter of concern to your committee whether members of the Teamsters Union were associated with racketeers or known mobsters?

Mr. Knachel: Objection.

The Court: He may answer.

A. Yes, it was of concern to the committee, because we were directed to investigate criminal and improper practices, and the committee felt it was its duty and it did undertake to ferret out and get information regarding racketeering; or domination of unions, or unions and businesses, by criminal elements of racketeers, and we were interested.

Q. Directing your attention again to the list of names which you identify as having been known to the committee, Senator, was it a matter of interest to the committee (83) whether or not any or all of these individuals would be the recipients of gifts from the Joint Council?

Mr. Knachel: Objection.
The Court: You may answer.

A. Well, the sending of gifts certainly indicated, and did to the committee, some relationship other than just a mere acquaintance.

Q. Yes, sir. Now, with particular reference to Senator Bender, about whom you have testified before, was it a matter of interest to the committee whether or not there was such a relationship existing between Bender and Joint Council 41, or William Presser, at the very time that Bender was supposedly heading up a committee to clean up the Teamsters Union?

Mr. Knachel: Objection.
The Court: You may answer.

A. It would be of interest to know what the relationship had been in the past between Senator Bender and the organization that he was presuming to clean up or to investigate at that time.

Q. Now, in the event the invoice which you testified about had, in fact, originally contained the list of names which were read into the record, and in the event, Senator, that those names were removed from that invoice, would that tend to obstruct the business of the committee?

(84) Mr. Knachel: Objection, your Honor.
The Court: You may answer.

A. It would prevent the committee from getting that information which was pertinent to its inquiry, unless the committee might be able to get it elsewhere; and even if it could get it elsewhere, it would tend to obstruct, because it would make the committee's duties and work more burdensome by reason of not being able to get it where it was expected to be found and where it originally was.

Mr. Knachel: I move to strike the answer.
The Court: It may remain.

Q. Senator, was it a matter of interest to the committee whether or not certain individuals, or what individuals, would receive gifts from a labor organization?

Mr. Knachel: Objection, your Honor.
The Court: He may answer.

A. It would be, because frequently such gifts may indicate improper influences or attempted improper influences, and might also indicate in some instances a conflict of interest.

Q. In the event the sheet of paper which you made reference to with respect to Sheridan's testimony, the sheet of paper which was supposed to have contained a list of (85) names, in the event such a sheet of paper actually did exist in the records of Teamsters Joint Council 41, and in the event such a list was removed, concealed and withheld from the committee, would that action also tend to obstruct the business of the committee, Senator?

Mr. Knachel: Objection, your Honor.
The Court: You may answer.

A. It would, because the list according—let me say it this way. If it contained additional names of people in whom we might be interested, or that might indicate that there was some relationship which the committee ought to check and ascertain, the withholding of it or the destruction of it or the removal of it from these files would hinder and preveht the committee from carrying out its duties.

Mr. Knachel: I move to strike the answer.
The Court: It may remain.

Q. And it would be a matter of interest to the committee to see this list, Senator, in order to determine, in the first instance, whether or not it contained names in which the committee might be interested?

Mr. Knachel: Objection.

The Court: Well, it's repetition. I think he already answered that.

(86) A. It would be.

Q. Senator, the McClellan Committee as such has now gone out of existence, isn't that correct, sir? A. Well—

Q. The committee which we have referred to right along, the committee to investigate improper practices and activities was properly known as the McClellan Committee. I am making reference to that particular committee. That has now gone out of existence, isn't that correct, sir? A. The committee, the life of the committee expired, I believe, the 30th of April.

Q. Now, Senator,—

Mr. Knachel: What year?

The Witness: 30th of April, this year, 1960.

Q. And the committee did issue a final report, Senator, is that correct? A. It issued a final report in some six, I believe six different sections covering six different subjects.

Q. And getting back again to the interim reports, Senator, you outlined briefly the legislative recommendations made by the committee. Could you state in general terms whether or not Congress has since passed a law which embodies in principle these various legislative recommendations?

(87) Mr. Knachel: Objection.

The Court: He may answer.

A. Congress did pass last year what is popularly known, I believe, as the Landrum-Griffin Bill. It covered a number of the recommendations made by the committee.

I do not mean to state that the law passed last year covered all aspects of the committee's investigations, but it did cover and deal with a substantial part of the disclosures that were made and the recommendations made by the committee.

Mr. Kiernan: I have no further questions. Thank you, Senator.

The Court: We will have a short recess here.

Members of the jury, you can be at your leisure, but I think in the jury room during the recess period. If there is any particular thing you desire, you can report to the Bailiff about it. We will be in recess.

(Recess taken.)

The Court: All right. Senator, you may resume the stand for cross examination.

(88)

Cross Examination of John L. McClellan.

By Mr. Knachel:

Q. Senator, at the time you became chairman of the Senate Select Committee, the chairmanship went to the party in power in the Senate, is that correct? A. Well, it went to me and I am a member of the party in power. The resolution, I believe, provided that the committee should select its own chairman with the original organization, with the Vice President presiding, as I recall.

Q. Well, you know a lot more about this than I do, but if the Senate is Democratic, is the chairman Democratic? A. There are occasional exceptions, but that is the general rule.

Q. So in this case you were named chairman in the 85th Congress? A. 1957.

Q. And at that time the Senate was controlled by the Democratic Party? A. It was.

Q. And you are a Democrat? A. I am.

Q. All right. That committee, you say the life of that committee expired on April 1st of this year? A. April 30th, as I recall.

(89) Q. Well, I have before me a copy of a resolution No. 294, 86th Congress—

The Court: Speak louder, Mr. Knachel, because it is very difficult for all the jurors to hear you.

Q. I have before me a Resolution 294, 86th Congress, Second Section, page 5624 of the record, which extends the committee from March 31st, 1960 to January 31st, 1961. Is that your information? A. That committee—that is in error. The committee was not extended to 1961. Some resolution may have been introduced, and there was one introduced for that purpose.

Q. Well, I will read what I have here.

> "Resolved that the time for filing a final report by the Select Committee on Improper Activities in the Labor-Management Field established by Senate Resolution 74, 85th Congress, agreed to January 29, 1957 as amended and supplemented, is hereby extended to January 31, 1961."

Is that correct? A. What do you mean, is that correct? What you have read? Did you read it correctly?

Q. Yes. (90) A. You probably read it correctly, but that doesn't say that was the action of the Senate. That may be a resolution that was introduced in the Senate but not passed.

Q. You say it was not passed? A. No, that resolution was not passed.

Q. All right. I will read Section 2 to you.

> "For the purpose of enabling the Select Committee to complete"—
>
> Mr. Kiernan: Objection. The resolution was merely introduced, it was not passed. I don't see what pertinency it has at all.
>
> The Court: Well, I don't see at the moment, but perhaps counsel has something in view. I will permit it.

Q. "For the purpose of enabling the Select Committee to complete its work and prepare such final report is hereby authorized to exercise until such date all of the duties, functions and powers conferred upon it by Senate Resolution 74, 85 Congress, as amended and supplemented." Was that section of the resolution passed by the Senate? A. That section and that resolution was not passed by the (91) Senate. There was another resolution passed, and I can give you the correct situation if you desire it.

Q. All right. Will you tell me whether the resolution passed by the Senate extended any function of this committee? A. There was a resolution passed by the Senate transferring all of the functions and records and so forth of the Senate Select Committee to the Senate Committee on Government Operations.

Both resolutions were introduced, one to transfer its functions to the Government Operations Committee, and this resolution from which you are reading to continue the life of the committee for another year.

The one finally passed was the one transferring the functions of the Select Committee to the Government Operations Committee, thus permitting the Select Committee to expire.

Q. Then the same functions that were in existence for the Select Committee are now in operation by the Government Operations Committee? A. They are now vested in the Government Operations Committee by a resolution adopted by the Senate at this session.

Q. And what is the life of that committee? A. That resolution is for another year or until the 31st of (92) January, 1961.

Q. Have you any association with the Government Operations Committee? A. I am chairman of the Government Operations Committee.

Q. I see. So that your functions then as chairman will continue until 1961, is that correct? A. Well, my functions as chairman on that committee will continue until the next Congress is reorganized, which would be in January 1961.

Q. Now for the Senate Select Committee, how much gross money has been used for its functions? A. For the three years that we operated, and I can't be exact about this, something in the neighborhood of two million dollars.

Mr. Kiernan: May it please the Court, this is outside the scope of the direct examination.

The Court: I don't know what the purpose of that is. What was the idea for that?

Mr. Knachel: Well, I think the idea back of it is that I have generally a right to meet every claim that is made by the Government in the testimony before.

The Court: Well, what the (93) committee has spent or cost of it was not inquired into. I don't see how that is relevant to our matter here. The objection wasn't offered until after you had asked the question and it had been answered. I don't see any prejudice in it so far, so go ahead.

Mr. Kiernan: The Government will object to a continuation of this line of testimony.

The Court: Yes, I think it is irrelevant and immaterial and not proper cross examination.

Q. Your term of office is six years, is that correct, as a United States Senator? A. That is correct.

Q. And when does your present term expire? A. My present term will expire in January next.

Q. Are you up for re-election? A. I am.

Q. And when are you up for re-election? A. The Democratic primary in Arkansas will be held on the 26th day of July. The ticket closed, entries in the race closed for the Democratic nomination on the 27th day of April.

(94) Q. Are we talking about 1960? A. We are talking about 1960. The entries, the ticket has already closed. I am up for re-election, up for renomination at the moment.

Q. And if re-elected for six years, your term would then start in January, 1961, is that correct? A. That is correct.

Q. Now, Senator— A. Incidentally, I am unopposed for the Democratic nomination. I assume I will be re-elected.

Q. You don't know what other opposition you will get because the filing date has not expired? A. The filing date has expired.

Q. It has—July? A. The filing date expired on the 27th of April last.

Q. I see. Now, in the hearings held in Washington in September of 1958, there was a Senator Church who was member of your committee, is that correct? A. Senator Church was a member of the committee, and I believe he was in September, 1958. I do not recall the date when he got on the committee. The record will reflect that.

Q. Senator Church is a lawyer, is he not? A. I'm not sure.

Q. All right. (95) A. If you say he is, I will accept that.

Q. Well, he was a member of your committee? A. He did not have to be a lawyer to be a member of the committee. There were members of the committee who were not lawyers.

Q. All right. In your hearings your investigators were examined by members of the committee and the chief counsel, is that correct? A. At times they were called as witnesses to disclose under oath the results of their inquiry and their investigation and to testify and to identify documents that they received and had examined

Q. Very well. Now, when your investigators testified in a hearing where a certain member of a union or some other person was called as a witness, was the union member's lawyer permitted to cross examine your investigator? A. The lawyer, the union member's lawyer as such was not—the witness' attorney, who was testifying, the witness had the right to have counsel present to advise him with respect to his legal rights. The attorney could submit to the committee any question that he thought pertinent and desired to have asked of the witness, in the nature of cross examination, and the committee determined whether the question was pertinent or relevant, and also it may at its discretion, and it did frequently, direct (96) the question to the witness.

Q. Was full cross examination of your committee's investigator permitted? A. In the sense that you cross examine a witness in the court room, the answer is no.

Q. And I believe Mr. Kennedy had made a statement that if your committee had permitted full cross examination you would have only been able to examine some one hundred witnesses, where you actually examined 1500, isn't that right?

Mr. Kiernan: I object. The Defense attorney here is—

The Court: Just a minute. What is the objection?

Mr. Kiernan: The Defense attorney is testifying to what he believes someone who is not here has said on some occasion, which may or may not be connected with the committee hearing.

Mr. Knachel: I'm asking him.

The Court: Ask him the question again.

Q. Didn't Mr. Robert Kennedy state that your committee examined some 1500 witnesses, and that if full cross examination had been permitted they would only have had (97) time to examine approximately 100?

Mr. Kiernan: Objection.

The Court: Oh, he may answer.

A. I have no knowledge of such a statement.

Q. You have no knowledge? A. No, sir.

Q. Well now, when a committee witness is on the stand who decides what testimony is relevant? A. In a committtee investigation?

Q. Your committee, the Select Committee? A. Yes, sir, the committee determines.

Q. Pardon? A. The committee determines.

Q. I believe I was informed that there is an immunity that attaches to a Senator, is that correct, from testifying? A. What do you mean an immunity? I think during the session of a Congress, when a Congress is in session, you cannot compel a Senator to appear in court and testify with respect to testifying regarding official business of the Senate. We get the consent of the Senate to appear as a witness when requested, or when subpoenaed to do so.

Mr. Kiernan: May it please the Court, the Government believes that this line of questioning is going to open the door, because (98) the Government believes that the line of questioning being pursued now by the Defense attorney is going to open the door and make it necessary for the Government to develop on redirect examination the facts and circumstances surrounding this case which resulted in the Senator having received a resolution from the Senate directing him to appear as a witness in this particular case.

The Court: Well, I don't think it is as momentous as that.

Mr. Kiernan: Well, it may be.

Mr. Knachel: If we are going to have speeches, I would like to make one.

The Court: Go ahead and ask your question.

Mr. Knachel: I mean the Court has overruled me on every objection I have made.

The Court: Go ahead. Ask your question.

Q. Do you have to get consent of the Senate to have an investigator of your committee testify in a proceeding outside the committee? A. That is the proper procedure, and we do so generally. There may be an exception. I don't recall any.

(99) Q. Did you ever testify before a Grand Jury in Washington, D. C., in the case of United States vs. William Presser, relative to violation of U. S. Code 18, Section 1505? A. I did not.

Q. Did you ever testify in Cleveland, Ohio, in the case on trial now, United States vs. William Presser, before the Grand Jury in Cleveland? A. I did not.

Mr. Knachel: That's all, your Honor.

The Court: That's all, stand down. You are excused.

The Witness: Thank you.

The Court: That's all you want with the Senator?

Mr. Kiernan: That's right. May he be excused?

The Witness: May I be excused?

The Court: You are excused.

The Witness: T[illegible]k you.

Mr. Knachel: May I ask the Senator one question before he leaves?

The Court: All right.

By Mr. Knachel:

Q. Are you a friend of ex-Senator George Bender? A. I have no reason to be unfriendly with ex-Senator George (100.) Bender.

Mr. Knachel: Thank you, sir.

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(101)

Thereupon the Government called as a witness WALTER J. SHERIDAN, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION OF WALTER J. SHERIDAN.

By Mr. Kier[illegible]an:

Q. Would you kindly state your full name, please? A. Walter J. Sheridan.

The Court: You will have to keep your voice up so all the jurors and others interested may hear your answers.

The Witness: Very well, sir.

Q. Would you state your position or occupation, Mr. Sheridan? A. I am an investigator for the Permanent Subcommittee on Investigations of the Government Operations Committee of the United States Senate.

Q. Do you have some background or training or experience in the field of investigation, sir? A. I do.

Q. Would you tell the Court and jury what is the nature of your background and training as an investigator? A. From 1950 until 1954 I was a Special Agent with the Federal Bureau of Investigation; from 1955 to 1957 I was an investigator and subsequently served in a supervisory (102) capacity with the National Security

Agency in Washington, D. C.; from April 1957 to date I have served as investigator with the Senate Select Committee and now with the Senate Permanent Subcommittee.

Q. Now directing your attention to the second agency you mentioned, Mr. Sheridan, would you repeat the name of that again, please? A. The National Security Agency.

Q. Could you briefly state the nature of that agency with respect to whether or not it is a security agency? A. It is an intelligence agency.

Q. Does it have a high security clearance? A. Extremely high.

Q. Did you have to pass certain requirements in order to qualify for employment with that agency? A. Yes, you do.

Q. Could you state briefly what they are? A. I cannot go into too much detail, because part of it is classified, but they do conduct what we call a full field investigation in order that you may qualify for the clearance required for access to the information in the agency.

Q. From April 1957 to April 1960 were you an investigator with the committee popularly known as the McClellan Committee? **(103)** A. I was.

Q. And that committee was engaged in the investigation of improper activities of the labor-management field, is that correct? A. That's right.

Q. Could you state generally what your duties were as an investigator with that committee? A. My duties were to interview prospective witnesses, to examine documents relative to the prospective witnesses, to investigate situations, organizations, relative to labor-management activities in various cities throughout the United States.

Q. Now, with particular reference to the State of Ohio, did you have any assignment in this area, sir? A. I did.

Q. Will you state what that was, generally? A. Well, commencing in about early 1958, we did have an investigation in the State of Ohio, both in Cleveland and elsewhere, concerning union organizations, including the Teamsters organization, and I was from time to time in the State of Ohio supervising a certain phase of that investigation.

Mr. Kiernan: Will you mark this as Government's Exhibit 9 for purposes of identification, please?

(104) (Thereupon the document referred to was marked by the Clerk, Government's Exhibit 9, for identification.)

Q. Mr. Sheridan, I will hand you what has been marked Government's Exhibit 9 for purposes of identification and ask if you can identify it? Merely answer yes or no. A. Yes, I can identify it.

Q. Would you identify this document, please, sir? A. This is a subpoena issued by the Congress of the United States on Joint Council 41, International Brotherhood of Teamsters, Cleveland, Ohio. It calls for the production of certain records. Do you want me to read the actual production?

Mr. Kiernan: The Government offers Exhibit 9 in evidence, your Honor.

The Court: It may be received.

Q. Making further reference to Government's Exhibit 9, Mr. Sheridan, would you state what that subpoena called for? A. It calls for production—I will read it:

> "And produce your records for the period January 1, 1949 to January 1, 1958, including cash receipts and disbursements books, ledgers, cancelled checks, check stubs, pay books, paid bills, records of loans, correspondence files, **(105)** memoranda, payroll records, minutes of meetings, records of all bank accounts open or closed, and any other records relating to Joint Council 41, International Brotherhood of Teamsters."

Q. Did you identify the subpoena by number, Mr. Sheridan? A. It is subpoena No. L-3089.

Q. Now, Mr. Sheridan, by making reference to the subpoena can you tell whether in fact it was served?

Mr. Knachel: Objection.

The Court: It speaks for itself, but he can tell.

Mr. Knachel: If there is an issue as to whether this subpoena has been served, I think it is not proper evidence.

The Court: Is there an issue on it? Did he serve it?

Mr. Kiernan: Not that I know of. I didn't realize—

Mr. Knachel: If he served the subpoena, why doesn't he say so?

The Witness: I am about to.

Mr. Kiernan: May it please the Court, the Government will attempt to try the case in its own way and if Defense counsel—

(106) The Court: Well, it was a little obscure. I myself thought that somebody else had served it. If you had just asked him if he served it, that would have been the end of it.

Mr. Kiernan: I withdraw my previous question.

Q. Did you serve the subpoena, Mr. Sheridan? A. I did.

Q. Could you state when you served it? A. On March 21st, 1958.

Q. How did you make service? A. I personally on William Presser.

Q. Is Mr. William Presser in the court room now? A. Yes, he is.

Q. Would you point him out? A. Sitting at the table.

Q. And he is the defendant in this case? A. Yes, he is.

Q. Now, Mr. Sheridan, was there an arrangement made whereby the records called for by this subpoena would be produced to an office of the committee set up here in Cleveland? There was.

Q. Could you state, Mr. Sheridan, whether or not it came to (107) your attention some months after this subpoena was issued whether or not it had been fully complied with?

Mr. Knachel: Objection.

The Court: Well, you say was an arrangement made. With whom? There is evidence with whom the arrangement was made about production.

Mr. Kiernan: Well, Mr. Sheridan testified that he generally was in charge of the investigation in the Cleveland area, your Honor.

The Court: Who was the arrangement with to have these matters submitted to the Cleveland office?

Q. Would you more fully describe whatever arrangement might have been entered into? A. The arrangement was originally made between another staff investigator other than myself by the name of Arthur Kaplan. The arrangement was made with Mr. Cozza and Miss Steuer who were representing various Locals of the Teamsters Union.

The records of these Locals had been subpoenaed and an arrangement was made by Kaplan with Mr. Cozza and Miss Steuer whereby the records would be turned over through them to our committee office here **(108)** in Cleveland. That was before I came to Cleveland.

When I came to Cleveland I was informed of that arrangement and the arrangement continued in effect so long as we had our office here, and the records that were furnished were furnished in this manner.

Q. Well, in the course of your official duties, Mr. Sheridan, did there come to your attention whether or not this subpoena was fully complied with? A. Yes, it did.

Mr. Knachel: Objection.

A. It came to my attention—

Mr. Knachel: I object.

The Court: He may answer.

A. —the subpoena had not been completely complied with.

The Court: Could you identify a little better for me—maybe the jury got it—who were these persons that you had the arrangement with? I don't quite understand that. Were they employees of Joint Council 41, and who were they?

The Witness: Mr. Cozza and Miss Steuer are partners, I believe, in a law firm. They were representing the Teamsters Union generally in Cleveland.

The Court: That is what we wanted (109) to know.

The Witness: So our dealings were with them to obtain any records that we wanted to obtain.

Mr. Knachel: Well, I don't want to interrupt, but I think Mr. Cozza is a Certified Public Accountant.

The Witness: He is also an attorney, I believe.

Mr. Knachel: Yes, both capacities.

The Witness: He is both, right.

Q. In any event, it came to your attention in your official capacity that Mr. Cozza either as a Certified Public Accountant or as an attorney, or whatever he was, was representing the Teamster Locals in this area and turning over various records which had been subpoenaed by the committee, is that correct? A. That is correct.

Q. And it also came to your attention, you testified, that this particular subpoena on Joint Council 41 had not fully been complied with, is that correct? A. That is correct.

Q. Now directing your attention to the late summer of 1958, were you informed by your committee counsel that information had come to the attention of the committee (110) concerning the establishment of a corruption or anti-corruption commission by the Teamsters Union? A. I was.

Mr. Knachel: Objection.

Q. And did your committee—

The Court: He may answer.

Mr. Knachel: Exception.

A. I was.

Q. And did your committee counsel direct you to conduct certain investigations with respect to that particular commission?

Mr. Knachel: Objection.

A. Yes, it did.

The Court: He may answer.

Q. More particularly did he instruct you to conduct various investigations with respect to the chairman of that commission?

Mr. Knachel: Objection.
The Court: It is a little leading.

A. He asked me to conduct an investigation relative to any affiliation that might exist between the chairman of the committee and the Teamster organization or officials in the State of Ohio.

Q. And the chairman organization was what, sir? A. Pardon me?

(111) Q. The chairman organization of this particular commission was what?

Mr. Knachel: Objection.

A. I don't understand the question.

Q. Well, do you know who the chairman of the commission was? A. Yes, I do.

Mr. Knachel: Objection.

Q. What was his name, sir?

Mr. Knachel: Objection.
The Court: He may answer.

A. George Bender.

Q. And that was the former Senator George Bender, is that correct? A. That is correct.

Q. Now did there come a time in September of 1958 in connection with your official duties, particular reference being made to the week of September 8th, when you had occasion to come to Cleveland? A. Yes, there was.

Q. Would you state what the instructions were you received with respect to that visit that you made?

Mr. Knachel: Objection.

A. Well, the—

The Court: Just a minute. (112) From whom and what were they, written or what?

The Witness: I can answer the question.

The Court: You answer it without telling what it was.

A. The instructions were given to me by the chief counsel, Mr. Kennedy, in late August 1958. And the instructions were that in view of the fact that Mr. Bender had been appointed to this committee or commission, and in view of the fact that the committee had certain information indicating a past connection or association between Senator Bender, former Senator Bender and the Teamsters Union, that I should come to the State of Ohio and attempt to establish if there had been an association and the degree of that association. I came to Ohio commencing in late August 1958 and pursued those instructions.

Q. Yes. And you conducted various investigations along that line in various sections of Ohio, is that correct? A. That is correct.

Q. And again returning to the week of September 8, 1958, you testified that you came to Cleveland, is that correct? A. That is correct.

Q. And your trip to Cleveland at that time was in connection with the instructions you have previously testified to, (113) is that correct? A. That is correct. That was actually—I was actually returning to Cleveland because I had been in and out of Cleveland. This wasn't the first time I had come to Cleveland.

Q. And during the course of these few weeks when you were conducting this investigation you had been to Cleveland before the week of September the 8th? A. That is correct.

Q. Now when you came to Cleveland in the week of September 8th did you have occasion to visit the offices of Joint Council 41? A. I did.

Q. Will you tell the Court and jury, please, the facts and circumstances surrounding your visit there? A. Yes, sir. We had, as I mentioned, been obtaining various Teamsters records from Mr. Cozza and Miss Steuer. Now as called for in the subpoena one of the records or one of the items called for was correspondence files, memoranda, the type of record that is usually found in a file. We had not received any such records from Joint Council 41.

In view of that fact I went to the office of Joint Council 41 to review such files.

Q. Do you recall the date that you went to the office, sir? **(114)** A. September 9, 1958.

Q. And that was on a Tuesday? A. I don't recall that. I talked to Mr. Presser. I told him what I wanted to do, that I wanted to look through these files. He showed me where they were and I did proceed to go through the files. Do you want me to go on?

The Court: Just what you did.

Q. You may continue. A. In going through the files I noticed this envelope marked "Christmas Gifts" which did contain certain documents, one of which was an invoice on the Rudolph Deutsch Company which indicated that eight champagne masters at $100 each were purchased by Joint Council 41 for eight individuals whose last names appeared on the voucher.

I took notes of this voucher and after I had completed reviewing the files I indicated to Mr. Presser that I would like to take four of the files with me. He said that he did not want me to take them until he had photostats made. So I left the files with Mr. Presser to have photostats made.

Q. Now you make reference to Mr. Presser during the course of your description of your visit Is that the same Mr. Presser that you pointed out before as being the defendant here, sir? **(115)** A. It is.

(Article marked for the purposes of identification as Government's Exhibit 10.)

Q. Now, Mr. Sheridan, would you describe briefly for the jury the physical setup at the offices of Joint Council 41 to the best of your recollection? A. Well, to the best of my recollection Mr. Presser's office is immediately to your right after going up a stairway. The office door is—it appeared all of the office doors in the building, but this particular office door was locked. It has a peephole in the top of the door and you knock on the door, and to gain admittance a buzzer operated from inside opens the door and then you can go into the office.

Q. Now did Mr. Presser's office consist of a suite of one, two, three, four—how many rooms, sir? A. Well, there was an anteroom, as you entered the office, where the filing cabinets which I reviewed were located. There was a desk that Mr. Presser's secretary sat at. Off to the left was Mr. Presser's office. As far as I know these are the only two rooms. I don't recall seeing any others.

Q. Was there anyone else beside yourself and Mr. Presser there? A. Mr. Presser's secretary was there.

(116) Q. And her name was what? A. Mrs. Passalaqua.

Q. Now do you recall what time of the day it was that you went to the offices of Joint Council 41? A. I would say late morning, early afternoon. I am not absolutely certain of that.

Q. And you testified that you indicated to Mr. Presser that you wanted to go through his records? A. That's right.

Q. And he showed you where the records were? A. He did.

Q. Or did he instruct his secretary to make them available to you? A. Well, I think it was a joint effort. He told her what I wanted, he indicated where they were and she helped to make them available to me.

Q. At that point you proceeded to review the records in which you were interested, is that correct? A. That is correct.

The Court: I think we will suspend at this time for the noon recess.

Members of the jury, we are going to suspend at this time until 2 o'clock this afternoon. You will bear in mind the instructions which I gave you yesterday (117) afternoon respecting your conduct during the trial of the case.

You will not discuss the case or any phase of it amongst yourselves and permit no one to talk with you about it or any phase of it, and avoid forming or expressing any opinion respecting the merits of the case or the guilt or innocence of the defendant until you have heard all the evidence and the case is submitted to you for your consideration.

Keep your own counsel.

Return at 2 o'clock ready to resume the trial of the case.

(Thereupon court adjourned until 2 o'clock p.m., June 1, 1960.)

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(118) Wednesday, June 1, 1960, 2:00 P.M.

The Court: Request was made of the Court that all persons who expect to testify as witnesses in the case be excluded from the court room. You will have to go to the witness room and remain until called to testify. Each of the parties knows who his witnesses are.

DIRECT EXAMINATION OF WALTER J. SHERIDAN (Resumed).

By Mr. Kiernan:

Q. Now, Mr. Sheridan, when you were on the stand before recess, you were testifying concerning the visit to the Joint Council 41, and I believe you had testified that Mrs. Passalaqua was in the office, and Mr. Presser was in the office with you. In somewhat more detail, could you recall the circumstances surrounding how you went to the office, what you said, what was said to you, and what you did, item by item? A. Well, when I entered the office, I asked Mr. Presser if I could review the files that I had mentioned earlier. He indicated where the files were, which was a filing cabinet at the far end of the room. Mrs. Passalaqua was in the room, and he told her, made reference to the fact that I wanted to check (119) through these files, and he showed me where the files were, told me where to look through them.

As I said before, it was kind of a joint venture, she also showed me where the files were. There was more than one file cabinet, and I proceeded to look through the files at the filing cabinet, right next to the filing cabinet, taking the files out and putting them out on some flat surface there, and I went through the files; and in going through them, I noticed this—

Q. Not to interrupt you, Mr. Sheridan, but now you have reached the point where you have started to go through some files. A. That's right.

Q. You did this in Mr. Presser's office or in the outer office, which you made reference to? A. This was in the outer office.

Q. And that is an office which was occupied by Mrs. Passalaqua? A. That is correct.

Q. Can you recall approximately what the scene was, where Mrs. Passalaqua was in that office, and where you were? A. Well, Mrs. Passalaqua was seated at a desk here (indicating), and I was reviewing the files at a (120) cabinet over here, and this end of the office (indicating). Mr. Presser had gone back to his office, which would be back in this direction (indicating).

Q. Do you recall whether or not this outer office was rather large, medium size, or small? How would you describe it in size? A. I would describe it as medium sized, perhaps the length from the beginning of the jury box down to the end—to the rail there (indicating), and possibly as wide as from the jury box rail to the other side of the defense table.

Q. Approximately 12 by 15, you would say? A. Roughly.

Q. How close were you to Mrs. Passalaqua during the time you were going through these files? A. Well, she was probably six to ten feet away from me most of the time.

Q. Was her back toward you, was she looking at you, or what was the arrangement in that respect? A. Well, my back was to her, so, of course, I can't say what she was doing all the time I was going through the files. She would be facing, as I recall it, sideways to me, and could have observed me, but I don't know whether she was observing me or not.

(121) Q. Then, in other words, you would say she was in a position where she could have observed you, but you could not observe her? A. That's right, without turning around.

Q. Do you recall whether you were sitting down or standing up, or in what position you were? A. I believe I was sitting down, or I was leaning—I had some surface there I was working on, where I put the files on to go through, and I believe I was sitting down. I am not absolutely sure of that.

Q. That would be your best recollection that you were probably sitting down? A. Sitting down, or leaning on a surface, whatever it was.

Q. During the course of time when you were examining these files, did you have occasion to have any conversation with either Mrs. Passalaqua or the defendant, Mr. Presser? A. I had some conversation with Mrs. Passalaqua. Do you want me to tell you what the conversation was?

Q. Well, was it anything that would be of a pertinent nature to the inquiry, sir? A. Yes.

Q. Or was it general small talk? A. I noticed that the files in the file cabinet seemed to be mostly new files, the folders themselves, and **(122)** that much of the material in the files seemed to be recent material rather than old material, so I asked Mrs. Passalaqua where the earlier material was, and she said that it had been turned over to Mr. Cozza along with the rest of the documents we had asked for, and that she had had to make up new folders to replace the folders she had given to Mr. Cozza.

Q. Did you have any conversation with the defendant, Mr. Presser? A. Mr. Presser came out a couple of times. He stood behind me, I recall once, and he might have asked me what I was looking at. I don't recall him asking it. While I was going through the files, I don't remember any specific conversation with Mr. Presser, except the fact that he did come out there a couple of times.

Q. During the course of time when you were going through the files, did you have occasion to take any notes? A. Yes, I did.

Q. Do you recall what those notes concerned, generally? A. Well, the notes I took concerned the envelope and its contents, which I mentioned earlier. There was an envelope with the markings on the outside "Xmas List." There was a voucher from the Rudolph Deutsch Company for the champagne masters that I have already testified to, there was a sheet of paper with a list of (123) names on it, the eight names that were on the voucher were included on the other paper, and there were additional names, and next to the names there were either amounts of money or indications that these people would be given some kind of a Christmas gift.

Q. To the best of your recollection, can you recall the appearance of this second piece of paper? A. My recollection is that it was a yellow lined sheet of pad type paper.

Q. Are you positive of that, sir? A. I am not positive. That is my best recollection.

Q. That is the best recollection you have? A. Yes.

The Court: Was this invoice in the envelope?

The Witness: Yes, both the invoice and this other paper were in the envelope.

The Court: Both papers were in the envelope when you saw it?

The Witness: Yes, sir. I took them out of the envelope to look at them.

Q. And there was a marking on the outside of the envelope? A. This marking of "Xmas List" on the outside of the envelope.

Q. Now, getting back to the notes that you took, Mr. (124) Sheridan, you said you took notes concerning this particular invoice? A. Yes, I did.

Q. To what extent did you take notes concerning the invoice? A. Well, I took notes which I think in most respects contained all of the details that were on the invoice. I may have left out some of the items, but, for the most part, I remember I copied the name of the company, I remember putting down a couple of telephone numbers of the company. I had notes of the eight names that were on the invoice, and on the bottom of the notes I indicated that this other list, this other paper not only included the last names of the people that were on the voucher, but it also included their first initials, and I indicated this on the notes.

Q. Mr. Sheridan, I will hand you what has been marked Government's Exhibit 10 for purposes of identification, and ask if you can identify that document? A. I can.

Q. Will you say what it is, sir? A. These are the notes I have been referring to that I took at the Joint Council 41's office on that occasion.

Mr. Kiernan: The Government offers in evidence Exhibit No. 10.

(125) Mr. Knachel: No objection.

The Court: It may be received.

Q. Now, Mr. Sheridan, getting back to that same occasion, did you take notes concerning any other documents? A. No, I did not.

Q. Then these were the only notes that you took on that particular day concerning the records of Joint Council 41 or any other factors concerning Joint Council 41 in the offices? A. That is correct.

Mr. Knachel: May I hear that question and answer again?

(Reporter read back the last question asked of and answer given by the witness.)

Q. Now, Mr. Sheridan, I will call your attention to what appears to be a date on the upper left-hand corner of Exhibit 10, and ask if you can explain it? A. The date is September 9, 1958, which was the day I was at the Joint Council office and took the notes. The date is merely indicated to fix the date that the notes were taken.

Q. Now, Mr. Sheridan, did there come a time when you finished your business at Joint Council 41? A. Yes, there did.

Q. And at that time you started to leave, isn't that (126) correct, sir? A. Well, at that time I had chose four of the files from the cabinet. I indicated to Mr. Presser that I would like to take these files with me.

He said that he didn't want me to take the files—

Q. Excuse me, Mr. Sheridan. I believe you answered the question.

Was the invoice and the envelope marked "Xmas List" with the invoice and the other list in those envelopes that you were going to take from Joint Council 41? A. In the files, yes, it was.

Q. It was in the files that you wanted to take? A. Yes, it was.

Q. Would you continue, please, with what conversation you had as you were leaving? A. I asked Mr. Presser if I could—I told him I would like to take the files with me, these four particular files.

He said that he didn't want me to take them, that he would like to have photostats made of them and then he would turn over the photostats or the originals to the committee.

I agreed to this. I gave him the files, and I left the office.

(127) Q. Now, Mr. Sheridan, directing your attention

to the 13th of September, 1958, did you have occasion to return to the offices of Joint Council 41? A. Yes, I did.

Q. Would you briefly tell the circumstances leading up to that second visit? A. I came back to Cleveland from Chicago. When I arrived at the airport, I called the office of Joint Council 41. I believe Mr. Presser answered the phone himself. I identified myself.

He made a statement to the effect that if he had known it was me, he wouldn't have answered the phone. Then I asked him if I could come down and pick up the records that we had requested. He said that he didn't want me to come down then, that he was leaving.

Then I told him that he had promised to turn the records over, and he said, "Well, if I promised to, I am a man of my word, and I will turn them over to you."

I told him I would come down, and I went from the airport to his office to obtain the records.

Q. Now Mr. Sheridan, returning to your previous visit, you were leaving the office, you testified, and Mr. Presser asked you to leave the folders with him so he could have them photostated? **(128)** A. That is correct.

Q. Do you remember what you did with the folders? A. As I was leaving?

Q. Yes. A. I gave them to Mr. Presser, and Mr. Presser took them into his office, and I left by the front door.

Q. Did you notice what he did with them when he took them into his office, or do you recall? A. No, I don't.

Q. Now, it is four days later, and you have called Mr. Presser from the airport. A. That's right.

Q. And you did go down to the offices of Joint Council 41? A. I did.

Q. Will you tell what happened on that visit? A. I went in, and Mr. Presser came out of his office as I came in the ante room. There was an exchange of greetings, and he then reached inside the room some place and picked up the four files that I had left and handed them to me. He said that he had not had a chance to do anything with them, that he hadn't touched them, but that I could take them, take the originals the way they were.

So I sat down at, I believe, Mrs. Passalaqua's (129) chair and just flipped through the documents to see if they seemed to be in the condition that I had left them. I noticed that the voucher that I had seen before was in the files, but it had been altered so that the names that appeared on it before had been torn off of the voucher. The list that had been in the envelope with additional names on it was missing, and the envelope itself was missing.

Q. Now, on that visit you did obtain four folders from Mr. Presser? A. Yes, I did.

Q. Do you recall where these came from? A. In Mr. Presser's office?

Q. Yes, in the offices of Joint Council 41. A. They came from the file cabinet that I had described at the far end of the room that I had been going through.

Q. Well, more particularly, did you go in and pick these up yourself and just take them out of the office on your second trip in? A. You are talking about the second trip?

Q. Yes. A. No. Mr. Presser had them in his office, apparently on something because he went in and picked them off of something and brought them out to me and handed them to (130) me.

Q. Well then, to clarify your testimony, Mr. Sheridan, the time you got these from the file cabinet was on your first visit to the offices of Joint Council 41, is that correct? A. That is correct.

Q. And you were leaving the offices of Joint Council 41 and Mr. Presser took these records from you for the ostensible purpose of having them photostated? A. That is correct.

Q. And you handed them to him, and he brought them into his personal office? A. That is correct.

Q. Do you recall what he did with them when he brought them into his personal office? A. No, I don't.

Q. Four days later when you returned, you obtained these records from Mr. Presser again? A. That is correct.

Q. And he took them, as you have testified, from some piece of furniture inside the door of his own office? A. That is correct.

(Articles marked for the purpose of identification as Government's Exhibits 11A, B, C and D.)

(131) Q. Now, at that time you say you had a conversation with Mr. Presser. You testified you looked through those records and noticed that the invoice had been torn, the envelope was missing, and the other list was missing, is that correct? A. That is correct.

Q. And you did say something to Mr. Presser about this? A. Yes. I told Mr. Presser that the files were not in the same condition that I had left them, that something was missing, to that effect.

Q. Did Mr. Presser make any reply to this accusation? A. He said that as far as he was concerned, they were in the same condition that I had left them, that he hadn't touched them. Then he made the statement that, "You have your job to do, I have mine."

Q. Did you say anything further to Mr. Presser that you recall? A. Yes. I said, "I should have known better than to trust you."

Q. And did he say anything when you said that? A. That is when he said, "You have your job to do, I have mine."

Q. And that was the only explanation he offered you for the destruction of the records and the fact that the others were missing? **(132)** A. That is correct.

Q. Has he, from that time, ever offered you any other explanation as to what happened to those records? A. No.

(Article marked for the purposes of identification as Government's Exhibit 12.)

Q. Now, Mr. Sheridan, I will hand you four folders which have been marked Government's Exhibits 11A, B, C and D for purposes of identification, and ask if you could tell the Court and jury what they are? A. These are the files that I requested to obtain from Mr. Presser, and they are the same files that he subsequently gave me on the second visit to the office.

Q. And you examined those files? A. Yes, I did.

Q. And you examined them for the purpose of determining whether or not the envelope, the missing envelope, was in there, sir? A. Yes, I did.

Q. And you examined them to see whether or not the missing list was in there? A. I did.

Q. Did you look to see whether the torn portion of the invoice was in there? (133) A. Yes, I did.

Q. And did you find any of them, sir? A. No, I did not.

Q. And are these files in substantially the same condition they were when you obtained them from the offices of Joint Council 41? A. Yes, they are.

Q. Now, apart from being in these files, was a search made of the records of the McClellan committee files to determine whether or not the invoice, the other portion of the invoice, the list or the envelope was ever turned over? A. Yes, there was.

Q. And what was the result of that search? A. To the knowledge of anyone connected with the committee who conducted the search or would have obtained these records, they have not been turned over.

Q. And you were the one who was, to some extent, at least, in charge of the investigation here in Cleveland? A. Yes, I was.

Q. And normally it would come to your attention if they were turned over? A. Yes, it would.

Mr. Knachel: Object to the form of the question.

(134) The Court: Yes, it is leading.

Mr. Kiernan: Withdraw it.

Q. Now, I will hand you what has been marked Government's Exhibit 12 for purposes of identification, and ask if you can identify that, sir? A. I can.

Q. Would you state what it is, Mr. Sheridan? A. This is the invoice concerning which I have testified of the Rudolph Deutsch Industrial Sales Company of Cleveland, Ohio, dated December 8, 1955, indicating the sale to Teamsters Joint Council 41 of Cleveland, Ohio of eight champagne masters at $100 each for a total cost of $800, plus tax. The buyer is indicated as Bill Presser.

Q. And that is the invoice Senator McClellan had reference to this morning when he said an invoice was entered as an exhibit before the committee, is that correct? A. That is correct. There is a notation on the bottom of the invoice indicating that the champagne masters were paid for December 29 and the number 8302 is underneath that.

The Court: What is the exhibit number?
Mr. Kiernan: Exhibit No. 12.

(135) Q. Now, disregarding the various identifying marks made by the Grand Jury and by the Clerk in this Court today, is the exhibit in substantially the same condition that it was when you obtained it from the records of Joint Council 41? A. Yes, it is.

Q. Now, when you noticed that the exhibit appeared to be torn, did you examine it closely, Mr. Sheridan? A. Yes, I did.

Q. What did you notice about, if anything? A. Well, it appeared to me at the time that the document had been torn, but at one point there is what appears to be an attempt to erase and perhaps as a result of the attempt to erase, a tearing of the document at that point.

Q. Now, after you left the offices of Joint Council 41, what, if anything, did you do, sir? A. I then went to the Rudolph Deutsch Company and obtained from that company the duplicate to that voucher.

(Article marked for the purposes of identification as Government's Exhibit 13.)

Q. Mr. Sheridan, I will hand you what has been marked Government's Exhibit 13 for purposes of identification, and ask you if you can identify it? A. I can.

(136) Q. Would you state what it is, sir? A. This is a duplicate of the voucher that was in the files of Joint Council 41 and contains the eight names that were originally on that voucher before they were torn off.

Q. And you say you obtained this from the offices of the Rudolph Deutsch Company? A. That's correct.

Q. And this document was also introduced as an exhibit before the Senate Committee, is that correct, sir? A. That is correct.

Q. These are the same eight names you have testified to before the Senate committee? A. Yes, they are the same eight names that were on my notes.

Mr. Kiernan: The Government offers Exhibit 13.

Mr. Knachel: No objection.

The Court: Received.

Q. Now, at the time you went to the offices of the Rudolph Deutsch Company—well, more specifically can you recall what day of the week all this happened on? A. Saturday.

Q. Do you recall what time of day on Saturday, generally? (137) Was it forenoon, morning, afternoon or evening? A. I would say noontime, shortly before or shortly after. I am not sure of that. I recall it Saturday because no one was in the office of the Rudolph Deutsch Company except Mr. Fetter.

Q. Do you recall what Mr. Fetter's first name is, sir? A. No, I do not.

Q. Would you tell the Court and Jury, generally, what conversation, if any, you had with Mr. Fetter concerning the obtaining of this document?

Mr. Knachel: Objection.

The Court: What importance would that have?

Mr. Kiernan: Not to show the truth or falsity of anything that was said, your Honor, but merely that a conversation did take place.

The Court: Between the witness and someone at the Deutsch Company?

Mr. Kiernan: That's right.

The Court: I think the objection should be sustained to that.

Mr. Kiernan: I mean it is not for the purpose of showing the truth or falsity of the subject matter of the conversation, but merely (138) to establish the fact that such a conversation was held on the 13th of

September when Mr. Sheridan went to the offices of the Rudolph Deutsch Company.

The Court: What would that establish?

Mr. Kiernan: It will be connected up, your Honor.

The Court: I will sustain the objection.

Mr. Kiernan: May I make an offer on that, your Honor?

The Court: Yes.

Mr. Kiernan: Should we approach the bench on it?

The Court: Well, if you want to, or you can dictate it to the stenographer out of the hearing of the jury.

(The following proceedings were had out of the hearing of the jury at the Court's bench:

Mr. Kiernan: Your Honor, the Government expects that this conversation concerned a telephone call which Mr. Fetter had with the salesman who handled the transaction. I want to show Sheridan's testimony on this from (139) the standpoint of pinpointing the date, the specific date of this telephone conversation.

Mr. Knachel: He is trying to do this without any witnesses.

Mr. Kiernan: The witnesses will be here.

Mr. Knachel: Then do it through him.

Mr. Kiernan: Your Honor, their memory may not be as good as Mr. Sheridan's on the date.

Mr. Knachel: These things are all self-serving to the Government.

The Court: Oh, no, I sustain the objection to it.)

Q. After you obtained these invoices from the offices of Rudolph Deutsch and Joint Council 41, your testimony is, I believe, that you went to Washington and they were produced—

Mr. Knachel: I object to this, your Honor. He is making a recital, and I think he should ask questions.

The Court: Yes, ask a question.

Mr. Kiernan: This is merely preliminary.

(140) The Court: Ask a question.

Q. Will you state what you did and where you went after that, Mr. Sheridan? A. As I recall, when I left Cleveland at that time, I went, I think, to Cincinnati and then to Columbus, and then back to Washington.

Q. Did you keep this invoice with you during the course of your trip? A. Yes, I did.

Q. Then you went back to Washington? A. Yes.

Q. What happened after that, sir? A. Well, shortly thereafter there was the public hearing at which these documents were introduced.

Q. And subsequent to the time the documents were introduced at the public hearing what, if anything, did you do with them? A. They were kept in the files of the committee.

Q. And did there come a time when they left the files of the committee? A. Well, following the hearing the matter was referred to the Department of Justice, and pursuant to that the FBI conducted some investigation, and the FBI took these documents from the committee at that time.

Q. And in the normal course of business, would the (141) committee have obtained a receipt from the FBI for this document? A. Yes, they would.

Mr. Kiernan: Will you kindly mark this Government's Exhibit 14 for purposes of identification?

(Document referred to was marked, by the Clerk, Government Exhibit 14 for identification.)

Q. I hand you what has been marked Government's Exhibit 14 for purposes of identification, and ask you if you can identify that? A. I can.

Q. Will you state what it is, please? A. It is a receipt dated November 10, 1958, signed by R. A. Newby, FBI, indicating that Mr. Newby had received from the committee the following documents:

1. Subpoena No. L-3228, Joint Council 41.

2. Subpoena No. L-5163, Joint Council 41.

3. Subpoena No. L-3093, William Presser.

4. Exhibit 184, invoice from Industrial Sales Company.

5. Handwritten notes of H. M. Thorpe regarding personal records of William Presser.

6. Subpoena No. 1-5129, Ohio Conference of Teamsters.

(142) Q. Mr. Sheridan, you testified that this document indicated that these records were turned over to the FBI, is that correct, sir? A. I'm sorry, could you ask that again?

Q. Was it your testimony that this document would indicate that these particular records were turned over to the FBI by the committee? A. Yes.

Q. Do you recall, Mr. Sheridan, whether or not you personally turned these documents over to an agent of the FBI? A. No, I can't say that I recall specifically turning over these papers, these specific documents. There was an agent from the FBI, I remember Mr. Newby was there in the office, and that he examined some records, some of which I made available to him. I can't say these were the particular ones.

Mr. Knachel: Well, I object to them, your Honor, as to the admissibility of that exhibit.

The Court: Which exhibit?

Mr. Knachel: The last one.

The Court: I don't see why it is important. The witness has identified them as the ones he saw. So why go around Robin Hood's **(143)** barn when he says they are the ones he got in the office? What differences does it make here?

Mr. Knachel: These are some other things that he claims were turned over to the FBI, and he doesn't claim that he turned them over himself.

The Court: We are only interested with these exhibits that he has identified as the papers he got from the Rudolph Deutsch Company.

Mr. Kiernan: For the benefit of the Court, your Honor, this document has to do with the turning over of the invoice with which we are concerned.

The Court: Yes.

Mr. Kiernan: The purpose of introducing this document is to show that the FBI did, in fact, get it from the committee file.

Mr. Knachel: Yes, but you can't show it by this witness. He didn't see it turned over.

Mr. Kiernan: May I ask a question?

The Court: If he can identify the receipt, that's adequate. You may show it, but I don't see the importance of it. The witness has identified whatever he got from the Deutsch (144) Company, so it is here.

Mr. Kiernan: May it please the Court, the exhibit is entered for the sole purpose of showing that the invoice with which we are concerned here was turned over to the FBI.

The Court: That's the only purpose of it?

Mr. Kiernan: That's right.

The Court: All right.

Q. Now, Mr. Sheridan, during the course of your duties as an investigator with the McClellan committee, did you become familiar with an interim report which was issued on March 24, 1958? A. I did.

Mr. Knachel: Objection.

The Court: Well, I can't rule on it until I know what it is. March what?

Mr. Kiernan: March 24, 1958.

Mr. Knachel: Your Honor, is it relevant whether he is familiar with it or isn't?

Mr. Kiernan: May it please the Court, this particular document has already been introduced in evidence, and I want to (145) establish the fact that the witness is familiar enough with it so that he can summarize it for the jury so that we don't have to read the entire document in.

Mr. Knachel: I object to the speech of counsel.

The Court: What date was it, March 24, 1958?

Mr. Kiernan: March 24, 1958. It is Government's Exhibit 7, your Honor.

The Court: Well, I hate to have the whole book in here.

Mr. Kiernan: That's right, and the only purpose of this is to ascertain whether the witness can summarize the contents of it, of the portion with which we are concerned. The original document is here and, of course, is available to the defense.

The Court: I don't quite see the pertinency of it, but you can reserve an exception until we find out what it is.

Q. Directing your attention to Government's Exhibit 7, and particularly to the portion of Government's Exhibit 7 having to do with a special finding of the committee relative to the Teamsters Union—

(146) Mr. Knachel: Objection.

Q. —are you familiar with that, sir?

Mr. Knachel: I object, your Honor.

The Court: He may answer.

A. Yes, I am familiar with it.

Q. Would you, to the best of your ability, give the jury and the Court a summary of what is contained in that document with reference to the special finding having to do with the Teamsters Union?

Mr. Knachel: Objection, your Honor.

The Court: Now, I don't quite see the purpose of that, Mr. Kiernan. What is it you expect to show by that? Didn't Senator McClellan give that?

Mr. Kiernan: Yes, sir. It is largely corroborative. I will withdraw the question.

The Court: Sustained. It is cumulative.

Q. Mr. Sheridan, during the course of your official duties as an investigator with the committee, did you become familiar with any one of the following addresses, and if you did, would you kindly state what the address is: 2741 Trumbull Avenue, Detroit, Michigan? (147) A. That is the address of the Teamsters Headquarters in Detroit, Michigan.

Q. 25 Lee Avenue, Washington, D. C.? A. That is the address of the International Teamsters Headquarters in Washington, D. C.

Q. 9 East Huron Street, Chicago, Illinois? A. That is the address of the insurance agency which is operated by Allen and Rose Dorfman in Chicago.

Mr. Kiernan: No further questions.

The Court: Cross examine.

Cross Examination of Walter J. Sheridan.

By Mr. Knachel:

Q. Mr. Sheridan, where are you from originally? A. Originally?

Q. Well, where were you born and raised? A. Utica, New York.

Q. Did you go to high school there? A. Yes, sir.

Q. Did you graduate from high school? A. I did.

Q. Did you have any college preparation after that? A. I did.

Q. Where? A. Fordham University.

(148) Q. Fordham University? A. Yes, sir.

Q. When did you graduate from Fordham? A. June, 1950.

Q. When did you first go into Government service? A. December, 1950.

Q. You had no experience as an investigator of any kind between college and going on the Government payroll, did you? A. No, sir.

Q. Now, you were hired as an investigator for the Senate Select Committee when? A. April, 1957.

Q. April, 1957? A. Yes, sir.

Q. Where was the first work that you did for it then? A. At Chicago, Illinois.

Q. And that was in 1957? A. That's correct.

Q. Did you have a field office in Cleveland for the Senate Select Committee? A. Yes.

Q. Where was that located? A. It is no longer located here. It was located in this building.

(149) Q. When did it start and when did it end? A. It started in approximately November, 1957, and it ended approximately, I would say, late last year, probably December, 1959, as a very rough guess.

(150) Q. Now the time *in question here, around* September of 1958, who were the employees of the Cleveland field office or who worked here, rather? A. Two GAO personnel on loan to the committee. Their names were Helen Thorp and Paul Riebesell.

Q. Is it Miss Thorp? A. I believe so.

Q. All right. Miss Thorp and Mr. Riebesell worked for the Senate Select Committee? A. Yes.

Q. In this area? A. Yes.

Q. Who was in charge of subpoenas in this area? A. Well, actually I wouldn't say anyone was in charge of subpoenas in this area.

Q. Well, did anyone in the Cleveland field office prepare subpoenas? A. It was done on occasions, yes.

Q. Who would do that? A. Miss Thorp might, Mr. Riebesell might, if I had been here I might have. If another investigator had been here, he might have.

Q. Well, any subpoena prepared then could be prepared in Cleveland, Ohio, by either Miss Thorp or Mr. Riebesell or any investigator that came into Cleveland for a **(151)** particular purpose, is that correct? A. It could have been, yes.

Q. Do you recall where the subpoenas were prepared that were served on William Presser personally and Joint

Council 41 of the Teamsters? A. I would say that at least some of them were prepared in Cleveland. I couldn't say whether they all were or not.

Q. Handing you Government's Exhibit 9, I will ask you where that was prepared? A. I could not say for certain. I would say the chances were that it was prepared in Cleveland.

Q. All right. And was the language used in the body of the subpoena, to-wit: "And produce your records for the period January 1st, 1949 to January 1st, 1958, including cash receipts and disbursement books, ledgers, cancelled checks, check stubs, day books, paid bills, records of loans, correspondence files, memoranda, payroll records, minutes of meetings, records of all bank accounts open or closed, and any other records relating to Joint Council 41, International Brotherhood of Teamsters," was that language placed in this subpoena by you? A. I am not sure. It very well could have been. In other words, this would be the usual language that would appear (152) in a subpoena of this type. It would be language that I would use in such a subpoena.

Q. Would you say that that is your language, then? A. Well, I can't pin it down that far because I just don't remember whether I personally did that. But it is the same type language that I would use if I were preparing a subpoena of this kind, yes.

Q. Well, if you didn't do it, then it would be Miss Thorp or the other gentleman in the office, is that correct? A. If it was prepared here, yes.

Q. And your recollection is that it was prepared here? A. No, my recollection is that the chances are it was prepared here. I can't say for certain that it was.

Q. And the chances are that if it was prepared here you filled in a subpoena signed by Senator McClellan that was blank, isn't that correct? A. That would be correct.

Q. And this subpoena which is—have you read the indictment in this case? A. No, I have not.

Q. Well, this subpoena was dated March the 19th, 1957, is that correct? A. Could I see it? (Witness examining document.) That is correct.

Q. And the subpoena in March of 1957 called for records up (153) to January 1, 1958, didn't it? A. Well, I would say that the '57—

Q. Does it not, sir? A. Yes, it does.

Q. So that in a subpoena marked Government's Exhibit 9 signed by Senator McClellan on March the 19th, 1957, you are asking for records nine months in advance, aren't you? A. No, sir.

Q. Well, this subpoena, after it was prepared was it served? A. Yes, it was.

Q. How long or how much later? A. How long after it was prepared was it served?

Q. Yes. A. I would say within a day or two.

Q. A day or two? A. The date of 1957 is obviously an error. I wasn't even with the committee in 1957.

Q. It is an error, you say? A. Yes. The date on the subpoena should read March 1958 rather than March 1957.

Q. Well, then there is an error of a whole year, then, isn't there? A. There is.

(154) Q. Now, when do you say this subpoena was served? A. I believe it was March 21st, 1957—or, '58.

Q. Pardon? A. March 21st, 1958.

Q. Who served it? A. I did.

Q. Did you ever see or know Mr. Presser before March 21st, 1958? A. Not to my recollection.

Q. So that in March of 1958 you met Mr. Presser for the first time? A. Yes.

Q. Now at the time this subpoena was served did you know when Mr. Presser had become President of Joint Council 41? A. I think I had a general idea, probably not a specific idea.

Q. Well, when did he become president of Joint Council 41? A. I don't know. I would say roughly 1955 or '56, but I am not sure of that.

Q. Well, at the time this subpoena was served upon Mr. Presser, you say it was March 21st, you had no idea who had control or custody of the records of Joint Council No. 41, did you? A. Well, I knew that Mr. Presser at that time was president (155) of Joint Council 41 and ordinarily would have control of the records at that time.

Q. Did you know who the Recording Secretary was? A. I am not sure whether at that time I did know that.

Q. Did you know who the Secretary-Treasurer of Joint Council 41 was? A. I am not sure that I did.

Q. This subpoena is not addressed to Mr. Presser, is it? A. No, it is not.

Q. Now at the time this subpoena was served was there in existence an arrangement between Mr. Riebesell and Miss Thorp and Mr. Cozza and Miss Steuer that records would be produced and that questions would be asked and questions answered between the people in your field office and those people? A. Well, in answer to the first part of your question there was an arrangement whereby the records would be produced by Mr. Cozza on behalf of certain Teamster organizations to our office here, yes.

Q. And there was in existence also an arrangement whereby when Mr. Riebesell took the records he would give Mr. Cozza a receipt, is that correct? A. That is my understanding.

Q. And you knew that, didn't you? A. Yes.

(156) Q. And you knew that in March of 1958, didn't you? A. I would assume that I did. This arrangement was told to me, I did not originate it.

Q. Pardon? A. I say I was informed of this arrangement, I did not originate the arrangement.

Q. That is all right, but when you came here you found that an arrangement existed between the field office and Mr. Cozza and Miss Steuer, is that correct? A. Yes, that is correct.

Q. On the day that you served the subpoena—withdraw that.

(Article marked for the purposes of identification as Defendant's Exhibit A.)

Q. I hand you what has been marked for identification Defendant's Exhibit A and ask you to examine that and tell me whether or not you recognize that? A. I recognize it, yes.

Q. And that is a subpoena—

Mr. Kiernan: Objection. May I examine the document, please?

The Court: It is always a good idea to let the other side see your exhibits.

Mr. Knachel: I know that. I just forgot about it. I heard you, too.

(157) (Government counsel examining exhibit.)

Mr. Kiernan: May it please the Court, I don't believe it is usual procedure for the Defense to be able to put in Defense exhibits as part of the cross examination. I would suggest if they want Mr. Sheridan to stay over to be a Defense witness when the Government closes its case, it would be proper.

The Court: Well, if the cross examination relates to matters to which he was inquired on in chief, why, it would be proper to produce it. Is this a matter that he was inquired about in chief?

Mr. Knachel: Well, he gave testimony before the McClellan Committee.

The Court: Well, I don't know what this is, of course. I am in the dark what your proffer is. Why don't you let me see it, then I can rule.

Mr. Knachel: Yes, how about that.

The Court: I think it bears upon the matter

Mr. Kiernan: There is no objection to the document itself, your Honor. Our only objection is to the fact that the Defense is (158) being put in as part of the Prosecution's case.

The Court: Well, cross examination, of course, they can offer exhibits of theirs that relate to the matter under consideration.

Mr. Kiernan: We will withdraw the objection.

The Court: All right. Go ahead.

Q. Is this a subpoena under which you gave testimony before the Select Committee in Washington? A. It is one of the subpoenas about which I gave testimony, yes.

Q. And I am referring to Defendant's Exhibit A. A. It is a copy of the subpoena, yes.

Q. This is the original? A. Could I see it again?

Q. You serve the original, don't you? A. That is the original. The copy, then, would be what I testified from in Washington.

Q. When you serve someone you serve the original, don't you? A. Yes.

Q. And when Mr. Presser was testifying before the Select Committee there were two subpoenas, one was for William Presser personally? A. That is right.

Q. And for his personal records? (159) A. That is correct.

Q. And the second subpoena was Defendant's Exhibit A, is that correct? A. The copy of Defendant's Exhibit A, that is correct.

Q. Well, you had that subpoena in Washington, a copy of it, didn't you? A. Right. That's right.

Q. And that subpoena was introduced in evidence? A. That is correct.

Q. And the production of records under this subpoena was part of your testimony relative to that, wasn't it? A. That is correct.

Q. So that in your testimony before the McClellan Committee you never gave any testimony before the McClellan Committee arising out of a subpoena served upon William Presser which is marked Government's Exhibit 9, did you? A. Now, the term "arising out of," I mean, the testimony—

Q. I will withdraw that, then, if you want me to put it some other way. A. Yes, I wish you would.

Q. Your testimony before the McClellan Committee related to the production of records under two subpoenas, is that correct? A. That is correct.

Q. And one subpoena was a subpoena served upon William (160) Presser personally dated March 21, 1958 and served by you, is that correct? A. That is correct.

Q. And the second subpoena about which you gave testimony before the Select Committee was Defendant's Exhibit A, isn't that correct? A. This was the subpoena which was introduced by the chairman relative to my testimony, yes.

Q. And the subpoena of Mr. William Presser personally concerning his own personal records was made a part of the record, too, wasn't it? A. Yes, it was.

Q. So that subpoena and Defendant's Exhibit A were the only two subpoenas offered in evidence or referred to at the hearings before the Select Committee, isn't that correct? A. Yes, sir.

Q. Now I hand you Defendant's Exhibit A, which is the subpoena, the original of the subpoena which is a part of the record of the Select Committee, and ask you who prepared that subpoena, if you know? A. I do not know. I know who served it, I do not know who prepared it.

Q. Do you know where it was prepared? A. I would say it was prepared in Cleveland.

(161) Q. And I see at the bottom of this subpoena this language which you will have to explain to me: "Production of records"—I am referring to Defendant's Exhibit A—"Production of records in Washington, D. C. will be waived, if they are made available in Cleveland, Ohio forthwith." What does that mean? A. It was a practice of the committee and the field offices, such as Cleveland, that rather than have the records brought to Washington, D. C., as we have mentioned in connection with the Cleveland office or whatever office it might be. This notation on the bottom of the subpoena is merely an indication to that person, to the person subpoenaed, that if the records are made available here, we won't require that they be brought to Washington.

Q. Would you operate the same way whether or not this language was on the bottom of the subpoena?. I mean, if it wasn't on there, would you follow the same system of having them brought into the Cleveland office? A. Yes, sir. It was sometimes an oral understanding rather than being written on the subpoena.

Q. Now, with reference to this matter—I notice you haven't mentioned any dates, or very few dates—on **(162)** this job that you had as an investigator for the Select Committee, when did you first come to Cleveland to investigate? A. Approximately, I would say, at that time, March, 1958, I personally came. That was my first visit to Cleveland.

Q. All right. How long were you here? A. On that occasion, I think two or three days, and then I came back for two or three-day periods or one-day periods periodically for the next six months. It wasn't very often.

Q. Do you keep any records of this? A. Well, not any systematic record, no.

Q. Do you keep any calendar of what you do each day? A. No, I don't.

Q. Do you make any report to your committee? A. Yes.

Q. Day by day? A. No, not day by day.

Q. Do you make a report to your committee of what work you do on certain days? A. Not in that way. When we get back to Washington, we would write reports based on the work in the field, and this would, in most cases, the information that was in the report would indicate what days this **(163)** information was obtained.

Q. You have no work record, then? A. To that extent, we do.

Q. Well, if you take a plane ride from Chicago to Cleveland, how do you get your money back? Or do you charge it? A. No, we use our travel card.

Q. You use your travel card? A. Yes.

Q. Well, who pays that bill? A. The Government, the Senate committee.

Q. When you get back from a trip like that, do you turn in your air lines ticket? A. You mean the copy?

Q. The folder? A. No.

Q. You don't? A. No; we don't.

Q. What do you do with it? A. Sometimes I keep them, sometimes I don't. I have quite a few of them.

Q. Well, is all your expense on a credit basis? A. No, the expenses are a per diem arrangement, whereby we get $12 a day.

The Court: Is there any point in (164) this, Mr. Knachel?

Mr. Knachel: Well, my point is if there is some record existing that shows where he is on certain days, I would like to know.

The Court: Well, you can ask him where he was, on what dates he was here. I don't know if there is any point in going through all this.

Q. On what dates were you in Cleveland in September, 1958? A. Well, I know I was here on the 5th. I know I came back on the 8th. I believe I left on the 12th, came back on the 13th. I don't know—I did come back through here, but I'm not quite sure when.

Q. Well, are you sure of the date you first came in to Mr. Presser's office in September? A. Well, it would be the same day as the date of the subpoena, which would be March 23rd.

Q. When did you next go into his office? A. The next time I went to his office was on the occasion of the review of the files in September, 1958.

Q. What date in September of 1958? A. September 9, 1958.

Q. Are you sure of that? A. That's the date on my notes.

Q. Well, the record of the Select Committee shows you were (165) in Washington on September 9, 1958. Does that mean anything to you? A. I don't know what record it is.

The Court: He testified that he went to see Mr. Presser at his office on the 9th of September.

The Witness: That's right.

The Court: And he came to Cleveland on September 8th, according to his direct testimony.

Mr. Knachel: Well, the record of the Select Committee shows he was in Washington, D. C. on September 9, 1958.

Q. Does it not (handing document to witness)? I pointed out the page that shows your appearance. Does not that official record of the Select Committee show that you were present at the hearings in Washington, D. C., on September 9, 1958? A. There is at the beginning of each hearing—

Q. No, does that record show that? A. The record indicates that I was one of the ones present as a member of the staff of the committee.

Q. All right. A. It is not accurate.

Q. Is it accurate, or isn't it? **(166)** A. It is not.

Mr. Kiernan: May the Government examine it?

Mr. Knachel: Well, you have the same thing. The same thing is right there.

Mr. Kiernan: Would you mind pointing out the page, please?

Mr. Knachel: (indicating).

The Court: We will have a short recess, members of the jury. You may be at ease for a few moments in your chambers upstairs.

(Short recess taken.)

(167) The Court: You may proceed.

By Mr. Knachel:

Q. Mr. Sheridan, at the recess I asked you whether you were in Washington on September 9, 1958, with the Select Committee. What is your answer? A. To my recollection I was not.

Q. Were you in Washington on September 10, 1958? A. To my recollection I was not.

Q. Have you examined the record that I gave you? A. Yes, I have.

Q. And does that record show that you were present at the hearings on September the 10th, 1958? A. It does.

Q. And have you examined another record which is here with reference to September the 11th, 1958? A. No, I haven't.

Q. Were you in Washington on September 11, 1958? A. I do not believe I was.

Q. Pardon? A. As far as I can recall I was not.

Q. Well, I hand you the record of the Select Committee and ask you whether or not that record shows that you were present at the Select Committee hearings on September 11, 1958? A. It does.

(168) Q. Do you recall where you were on September 9, 1958? A. It is my recollection that I was in Cleveland, Ohio.

Q. Do you recall where you were on September 10, 1958? A. Cleveland, Ohio.

Q. Do you recall where you were on September the 11th, 1958? A. Cleveland, Ohio.

Q. Do you recall where you were on September the 12th, 1958? A. Cleveland, Ohio, and Chicago, Illinois.

Q. Do you recall where you were on September 13, 1958? A. Chicago, Illinois, and Cleveland, Ohio.

Q. Well, on the 9th, 10th and 11th, then, I take it you were in Cleveland, Ohio, all of the day? A. Yes, sir.

Q. All right, sir. Before going over to Mr. Presser's office did you get a search warrant? A. No, sir.

Q. Did you have a search warrant when you entered his office? A. No, I did not.

Q. Did you serve him with a search warrant? A. No, sir.

Q. Before you looked at the files? A. No.

(169) Q. Before you went to his office did you have available to you and did you see a cancelled check in the sum of $824 payable to the order of Rudolph Deutsch Industrial Sales Company? A. I did not.

Q. Did you examine the cancelled checks and stubs relating to December of 1955 before you went to Mr. Presser's office? A. No, sir, I did not.

Q. Did you examine the records that were in the field office at that time? A. Some of them, yes.

Q. Well, did you examine them to the extent that you knew what records were there? A. What records were in the field office?

Q. Yes. A. To the extent that in conversations with Miss Thorp and Mr. Riebesell—and this was over an extended period of time—of records that had been subpoenaed and records that had been produced, I was aware that some of the records were there, some of them weren't, yes.

Q. Well, in your field office was a cancelled check payable to the order of the Rudolph Deutsch Industrial Sales Company for $824, was there not? A. I cannot answer that for certain. I did not see it.

(170) Q. Did you ever see it? A. No, sir.

Q. Well, did you ever as an investigator make any investigation as to whether or not the bill for these Christmas presents had been paid? A. No, I didn't.

Q. Did you ever examine the stub that related to this check for $824 to determine what marking was on the stub? A. No, I didn't.

Q. All right. In these files, they were in a file cabinet, I assume? A. Yes.

Q. How many folders were in the file cabinet? A. I would have to guess. I would say maybe 15-20-30 in each cabinet. 15 or 20, I would say.

Q. How many cabinets? A. There were one or two cabinets, four drawers in each. Now whether there were files in each one of these drawers I can't recall.

Q. Did you have a desk to work on? A. I remember I worked on something, I don't remember what it was. It was a flat surface of some kind, I don't recall what it was.

Q. Do you recall how long you were there? A. I would say a couple of hours, maybe a little longer.

(171) Q. And you were in Cleveland that whole day? A. Yes.

Q. All right. After your couple hours work did you go to the Rudolph Deutsch Company on Euclid Avenue to check whether or not those Christmas presents had been ordered and paid for? A. Are you speaking of the first visit?

Q. The first time? A. No, I didn't.

Q. Did you go to Rudolph Deutsch on the 10th, the next day? A. No, I didn't.

Q. To determine whether or not that order had been filled and the presents paid for? A. No, I did not.

Q. Did you go to Rudolph Deutsch on the 11th? A. No, sir.

Q. Had you been to Rudolph Deutsch before you came to Mr. Presser's office? A. No, sir.

Q. From where you worked—I believe you say there was an office, then there was a doorway, and was there another office where Mr. Presser was? A. Yes.

Q. From where you worked could you see Mr. Presser in his office? (172) A. I don't believe so. First I would have had to turn around and then I think to actually see him at his desk I would have had to lean back to see him.

Q. While you were there, did anyone come in and see Mr. Presser, talk to him? A. Not that I was aware of.

Q. During the two hours that you were there, did anybody come into that office? A. Not that I was aware of, but I had my back to the door.

Q. So that during the time you worked there, Mr. Presser and Mrs. Passalaqua were the only two in that office? A. So far as I recall.

Q. Well now, when you left that day, did Mr. Presser ask you for a receipt for these records you were taking? A. No, sir.

Q. Well, didn't you know at that time that there was an arrangement whereby Mr. Cozza gave receipts for these records? A. Again are you asking of the first occasion or the second?

Q. The first occasion. A. I didn't take the records on the first occasion.

Q. My question is, did he ask you when you were going to take them for a receipt for them? (173) A. No. He said he didn't want me to take them until he photostated them.

Q. Well then, he didn't ask you that, did he? A. Not that I recall, no, sir.

Q. Did you know when you went in there that your field office had given receipts for other records? A. I knew that they had ordinarily given receipts, yes.

Q. And there were a lot of receipts in their files? A. Yes.

Q. Where they had given Cozza receipts for records, isn't that true? A. Yes.

Q. And so far as your field office was concerned, when you came here that was the customary practice, wasn't it? A. Yes, sir.

Q. Well now, your next contact was how many days later? A. It would be four days. You mean with Mr. Presser?

Q. Yes. A. It would be four days later.

Q. Four days later. Had you telephoned his office before that? A. During that interim?

Q. During the four-day period. (174) A. I had not, no.

Q. Well, you say that when you came back, he went into his office and picked up four folders, is that right? A. Yes, sir.

Q. And you don't know where he picked them up from? A. Well, he picked them off of whatever is inside, just inside of his office door. I don't recall what it was. I don't even know if I saw it.

Q. Was it a television set of some sort? A. I don't know.

Q. Cabinet? A. I don't know.

Q. Did you see him pick them off a cabinet? A. I saw him pick them off of a surface. It was just a reach in. I was outside the office.

Q. Just inside the door of his office? A. Yes.

Q. And he picked them up and handed them to you, is that correct? A. Yes, sir.

Q. All right. Now, were you in his office or in the outer office when you discovered, you say, that one of these was torn? A. The outer office.

Q. The outer office. Now, what was missing? There was a (175) torn invoice, you say? A. There was a torn invoice.

Q. What else was missing? A. There was an envelope that the invoice had been contained in, there was another sheet of paper with a list of names on it. These two items were missing, the invoice was torn.

Q. There was an invoice of Rudolph Deutsch Industrial Sales? A. Yes.

Q. That was torn? A. Right.

Q. There was an envelope marked "Xmas Gifts" that was missing? A. Yes.

Q. And there was a sheet of paper, yellow sheet of paper that had the names of people that were receiving Christmas gifts? A. That's right.

Q. Was there anything else missing? A. Not that I know of.

Q. Well, do you say that was all that was missing from those files? A. Pardon me?

Q. Do you say that those three things were the only things (176) missing from those files? A. No, I cannot say that because I don't have a detailed memory of what was in the files. But I do know that these items were in the files, and that they were not in the files when I got them.

(177) Q. Well, now, you looked in your file and you saw that this envelope was torn, is that correct? A. Yes, sir.

Q. Did you, as a Government investigator, take that invoice to anyone to test it for finger prints? A. No, sir, I didn't.

Q. Did you at any time take that torn invoice to any Government agency to test it for finger prints? A. No, sir.

Q. Well, did you direct or request that any other Government agency check that invoice for finger prints? A. No, I didn't.

Q. Has it ever been tested, to your knowledge? A. Well, as I testified earlier, the FBI took the document, and they may have tested it for finger prints. I am not sure of that.

Q. Did you ever get a report that they did test it? A. There was a report that they had conducted some tests concerning it. I don't recall whether finger prints was one of them.

Q. Well, did you take this torn invoice to any Government lab, or the lab of any Government agency, to check it for erasures? A. No, sir.

Q. Did you get any kind of a report from the FBI that the (178) torn document had been checked for erasures? A. I am not certain if we got such a report.

Q. Well, did it come to your knowledge, directly or indirectly, or through any other route, that there had been a check in a laboratory of this invoice, the torn invoice, for erasures? A. Yes, I have a recollection of an FBI report wherein there was reference to the fact that this had been tested for erasures.

Q. Where did you get that information? A. But this was not done at my request or direction. In other words, once we referred the case to them, and the FBI took over the case, then what they did it was their doing, not mine. I think we do have a copy—I think we have a document in our files in Washington indicating that the FBI had conducted tests which included this type of test.

Q. You have that report? A. I believe so. I am not sure of that. I have seen such a report.

Q. Both as to finger prints and erasures? A. I am not sure of finger prints.

Q. Now, Government's Exhibit 10 is the memorandum in your handwriting that you wrote while you were in the room next to Mr. Presser's office on the day you were there (179) two hours, is that correct? A. On the day I was there for approximately two hours.

Q. Are there any other notes besides these? A. No, sir.

Q. Did you examine all the records in the file cabinets while you were there? A. I certainly examined most of them. I couldn't say for sure whether I examined all of them.

Q. Well, did you examine all of them, or didn't you? A. I don't recall.

Q. Well, did you come back—you didn't come back on any other date to examine any more, did you? A. No, sir, I didn't.

Q. To say your job was incomplete, did you? A. No, I didn't.

Q. And this list, Government's Exhibit 10, relates to information you say you took off of the invoice, is that right—part of it? A. Yes, sir.

Q. Is that correct? A. That's correct.

Q. Now, there are eight men listed on that as people to whom Christmas presents were sent, is that correct? A. Yes, sir.

Q. And the eight names you listed, you did not have in front **(180)** of any of those eight names their first initial, did you? A. No, sir.

Q. And then at the bottom of this you have marked "Other list"? A. Yes, sir.

Q. And on that you put "G. Bender." A. Correct.

Q. And that is for the reason that you were investigating G. Bender, is that correct? A. I was conducting an investigation which concerned Mr. Bender, yes, sir—Senator Bender.

Q. And also on the bottom of that list you put the name of "R. Bliss," didn't you? A. Yes, sir.

Q. And you knew who Mr. Bliss was, didn't you? A. I believe at that point I did.

Q. And you knew that Mr. Bliss was the State Chairman of the Republican Party, didn't you, in Ohio? A. Yes, sir.

Q. And you knew that before you went into Mr. Presser's office, didn't you? A. I believe I did.

Q. And you so testified in front of the Select Committee, didn't you? A. Yes, sir.

(181) Q. How long had you known the name of ex-Senator Bender? A. How long have I known the name?

Q. Or how long had you known who he was politically speaking? A. Probably dating from the time that I came with the Select Committee, or some time shortly thereafter.

Q. Well, who advised you who he was? A. Well, it was part of the information which came to my attention as an investigator. It was the information that Senator

Bender had previously conducted an investigation concerning the Teamsters Union.

Q. How long had you known who Mr. Bliss was—Ray Bliss? A. From September, 1958—August, 1958, perhaps. I didn't know who he was before that.

Q. Pardon? A. I did not know who he was before that.

Q. But you knew it in August, 1958? A. Well, I learned it some time during my inquiries in this area concerning Senator Bender.

Q. Did you put this in your inside pocket when you left on that day? A. No, sir.

Q. Where did you put it? A. It was in a stenopad—it was in a pad that I took the notes on. I was taking notes in a pad; this was one of the papers in the pad.

(182) Q. Well, did you have any other notes in that pad? A: I may have—not relating to this at all.

Q. Well, did you have any notes on that pad relating to anything that had to do with the records you were looking at on the day that you were in there the second—the first time? A. No, sir.

Q. Did you have any other records relating to anything? A. Relating to that visit?

Q. Yes. A: No, sir.

Q. So that this Exhibit 10 records the only notes you made on that occasion? A. Yes, sir.

Q. You left there and went to the Rudolph Deutsch Company on the second visit, when you found that the invoice was torn? A. Yes, sir.

Q. How long did it take you to get there? A. You mean to the Rudolph Deutsch Company?

Q. Yes. A. Perhaps an hour.

Q. From 22nd Street? A. Well, I would say from 22nd Street to downtown is probably 15 or 20 minutes, and another 45 minutes later **(183)** I went to the Deutsch Company.

Q. Where is the Rudolph Deutsch Company? A. Somewhere here in the downtown Cleveland area.

Q. And the place you were working on these records was 22nd Street? A. Yes, sir.

Q. And the Rudolph Deutsch Company is on 14th Street, isn't it? A. Yes, sir.

Q. But you went directly there? A. I believe I went to the office here and then went there.

Q. You went from 22nd Street to the office in the Federal Building? A. In this building; yes, sir.

Q. And then you went back up Euclid Avenue to the Rudolph Deutsch Company? A. Yes, sir.

Q. About what time did you arrive there? A. I don't recall. Some time in the afternoon. I don't recall what time it was.

Q. Did you talk to more than one person there? I believe you talked to a Mr. Fetter? A. I may have talked to a girl in the store and told her that I wanted to see somebody regarding some records, and then she, I believe, called Mr. Fetter and he and I (184) went up to the office.

Q. And you got a copy up there? A. Yes, sir.

Q. Now, that copy that you got from Rudolph Deutsch had on it the same eight names that you already had on the first day you went in to Mr. Presser's office, didn't it? A. Yes, sir.

Q. So that copy that you got at Rudolph Deutsch furnished no more information to you than you already had on the first day you went into Mr. Presser's office to look at these files, did it? A. I believe it did, in the sense that it furnished the document that we no longer had.

Q. I mean information. A. Well, it furnished documentary proof, which is much better than information.

Q. Well, the information was the same that you had on your notes, wasn't it? A. The information was the same; yes.

Q. All right. A. The document was not there. In other words, I had lost the document, so I went and got another document which would take its place.

Q. But the document that you got had the same information on it that was on your notes, Government's Exhibit 10? (185) A. Substantially the same; yes, sir.

Q. Did you ever have any contacts with Mr. Cozza and Miss Steuer? A. Yes, sir.

Q. When was your first meeting with them? A. I believe in March of 1958.

Q. And that was relative to looking over records? A. Yes, sir—not specifically looking over records, but more specifically to obtaining records.

Q. Well, on September 5, 1958, did you see Mr. Cozza? A. I believe I did; yes, sir.

Q. And what was that relevant to? A. I think the same general subject matter, obtaining records, and in addition I believe I served a subpoena upon them on that occasion.

Q. And that subpoena, as I understand it, was for Mr. Cozza and Miss Steuer to produce the records of their firm relating to Joint Council 41 in Washington, is that right? Yes, sir.

Q. Did they produce those records in Washington? A. They did.

Q. And on what date? A. I believe the 9th of September.

Mr. Knachel: I think that's all, your Honor.

The Court: Anything further?

(186) The Court: That is all. Anything further?

Mr. Kiernan: Yes, your Honor. I would like redirect.

Re-Direct Examination of Walter J. Sheridan.

By Mr. Kiernan:

Q. Now, Mr. Sheridan, your attention was called to the fact that a typographical error appeared on the subpoena which the Government introduced in evidence here today? A. Yes, it was.

Q. Is that correct? A. Yes.

Q. And you were the one who served this particular subpoena? A. I was.

Q. And you, to some extent, were in charge of this phase of the investigation, is that correct? A. Yes, sir.

Q. Did it ever come to your attention that the validity of this subpoena was in any way challenged by Joint Council 41 or any one on its behalf? A. No, sir.

Q. And, as a matter of fact, the Joint Council 41 produced records under this subpoena? (187) A. They did.

Q. Now, there were subsequent subpoenas issued to Joint Council 41, is that not correct, sir? A. Yes.

Q. And making particular reference to Defendant's Exhibit A? A. Yes.

Q. Now, Mr. Sheridan, would you compare Government's Exhibit 9, which is a subpoena which was served by you on March the 21st, 1958, with Defendant's Exhibit A, which is dated the 1st day of April, 1958, and state whether or not from the face of these two subpoenas the second subpoena does not merely supplement the first subpoena?

Mr. Knachel: I object to that.

The Court: Well, he can compare them.

Mr. Knachel: Well, the language speaks for itself, your Honor.

The Court: Well, I know, it saves me or the jury reading it if he tells us. The jury will have them later on.

Mr. Knachel: But they relate to entirely different things.

The Court: Well, let's find out about (188) it.

A. The subpoena of April 1st, 1958 served on Joint Council 41 for the production of records of Joint Council 41 which had not been specifically requested in the previous subpoena.

Q. Was it unusual, Mr. Sheridan, that the committee would serve a supplementary subpoena? A. Not at all.

Mr. Knachel: I object to all this.

The Court: He may answer.

Q. And would the service of a supplementary subpoena, or had it ever in the past in any way acted ~~to~~ revoke a subpoena which was outstanding? A. No, sir.

Q. And was there ever any statement made by any member of the committee or by any investigator, to your knowledge, to the people in Joint Council 41 that the original subpoena which you served on Mr. Presser was still outstanding? Was there ever any question about that?

Mr. Knachel: Objection.

The Court: He may answer.

A. No.

Q. Again referring to Government's Exhibit 9, would you read, Mr. Sheridan, exactly what is called for in (189) that subpoena?

Mr. Knachel: I object. It has already been done. It has been covered.

The Court: Well, I don't know whether we have heard it or not.

Mr. Knachel: Well, I read it verbatim to the jury.

Mr. Kiernan: Mr. Sheridan is sworn.

Mr. Knachel: Well, I object to that crack.

The Court: Is that Exhibit A?

Mr. Kiernan: No, that is Exhibit 9.

The Court: Did you read Exhibit 9, Mr. Knachel, to the jury, or Exhibit A? Which was it?

Mr. Knachel: I read Exhibit 9, I think.

The Court: Well, I don't remember it, anyway.

Mr. Knachel: Well, I don't care.

The Court: Go ahead.

A. "To Joint Council 41, and produce your records for the period January 1, 1949 to January 1, 1958, including cash receipts and disbursement books, ledgers, cancelled checks, check stubs, day books, (190) paid bills, record of loans, correspondence files, memoranda, payroll records, minutes of meetings, records of all bank accounts open or closed, and any other record relating to Joint Council 41, International Brotherhood of Teamsters."

Q. Now, Mr. Sheridan, I will call your attention to what has been marked Government's Exhibits 11-A, B, C and D, the documents which you testified you picked up from Mr. Presser on September 13, and ask you to review those documents briefly and tell the Court and jury whether or not documents called for in this subpoena, which was served in March, were not still in the files of Joint Council 41 when you went there in September?

The Court: I think he did testify to that earlier.

Mr. Kiernan: Well, your Honor—

The Court: He said so far as he could learn, they were the same files that he had seen earlier except for the ones that he said were torn or missing.

Mr. Kiernan: And these are the files—

The Court: Didn't you so testify?

The Witness: Yes, your Honor, I did testify to that.

(191) Mr. Kiernan: But not in reference to the specific question I just asked, your Honor.

The Court: Well, what is the specific question?

Mr. Kiernan: Whether or not the records which are contained in these files which Mr. Sheridan obtained from Joint Council 41 in September were not called for back in March by the subpoena which was issued then.

Mr. Knachel: It was not issued then. It was issued, but it wasn't served until a year later.

Q. It is your testimony, Mr. Sheridan, that this subpoena was served on March the 21st, 1958? A. Yes, sir.

Q. Is that not correct? A. Yes, sir.

Q. And there is a date on the face of this subpoena saying the 19th of March, 1957? A. Yes, sir.

Q. Which would be one year and two days before you served it? A. Yes.

Q. On the 19th day of March, 1957, were you an employee of the committee? (192) A. No, I was not.

Q. Was Paul Riebesell an employee of the committee? A. No, he was not.

Q. Was Helen Thorp an employee of the committee? A. No, she was not.

Q. Is there any question in your mind, Mr. Sheridan, but that that date 1957 was a typographical error?

Mr. Knachel: Objection.

A. Absolutely not.

The Court: He may answer that.

A. There is no question.

Q. No question at all? A. No, sir.

Q. And there was never any question raised as to the validity of this subpoena?

Mr. Knachel: I object to that. Who had a right to cross examine this man before today? He has senatorial immunity, how could I ever cross examine him before?

The Court: You had ample opportunity to cross examine him. He said it was a mistake.

Mr. Knachel: I mean before today. How would I ever know before? They didn't even know when they drew their indictment.

The Court: It doesn't matter, he said (193) it was a mistake.

Mr. Knachel: Well, it wasn't my mistake. They drew an indictment with the same mistake in it.

The Court: Yes. But it is not, as I view it, a very material mistake. There has been no prejudice.

Mr. Knachel: I am not saying there was.

The Court: There certainly is no prejudice to the defendant.

Mr. Knachel: I didn't say there was.

Mr. Kiernan: May it please the Court, the Government would like to point out for the record that we were aware of the fact that there was a typographical error on this subpoena, and we wrote that typographical error right into the indictment as the record will show. It was not attempted to be concealed in any way.

The Court: I determine now from the witness that it was a mistake, and I find no prejudice whatever in that fact.

Mr. Knachel: Well, you don't have any prejudicial conduct on my part in asking (194) something I have a right to ask for the first time in my life?

The Court: You are asking me something that I haven't even intimated. Now I might think up something.

Mr. Knachel: Well, all right.

The Court: Is there anything else?

Mr. Kiernan: The Government has some further redirect.

The Court: Well, what is it? Let's get it.

By Mr. Kiernan:

Q. Now, Mr. Sheridan, getting back to the day that you first went to the office of Joint Council 41 to serve this subpoena, was that your first visit to the Teamsters' building? A. I believe it was.

Q. Now, to the best of your recollection, would you describe the physical appearance not only of Mr. Presser's office, the office of Joint Council 41, but the Teamsters' building here in Cleveland?

The Court: Well now, is that redirect examination?

Mr. Kiernan: It was opened on cross.

Mr. Knachel: I never touched it.

(195) The Court: He certainly described the building and office pretty fully. I don't see any reason for going into it any more.

Mr. Kiernan: I believe it will become very apparent in a hurry.

The Court: Well, if there is more description, why, let's have it. I don't believe that it is redirect examination.

Q. More particularly, sir, there are a number of locals of the Teamster Union located in one building, is that correct? A. That is correct.

Q. That is a two-story building on East 22nd Street? A. Yes, sir.

Q. And Teamsters Joint Council has an office in that building? A. Yes, they do.

Q. Now, is there a directory that you know of, or that you recall?

Mr. Knachel: Your Honor, I object to that.

Q. Showing which office is which?

The Court: I will sustain the objection to it as not proper redirect examination. The matter was not brought out in cross-examination.

(196) Mr. Kiernan: May it please the Court, on cross-examination the question was opened up as to why Mr. Presser and no one else was served the subpoena by Mr. Sheridan. It is the purpose of this redirect to show that there wouldn't be no other logical person to serve but Mr. Presser.

The Court: I don't think they make any point of that at all. I don't understand that they are making any point that the proper person wasn't served. Do you?

Mr. Knachel: No. I just wanted to know if he knew the man that had custody of the books at that time. You can serve any officer.

The Court: I don't see any occasion for going into that

Q. Getting back to your interest, Mr. Sheridan, or the interest of the committee in the relationship between Mr. Bender and the Teamsters Joint Council, would you give some background as to why it was that you came out to Ohio first, what it was you first found when you came out here that made you so particularly interested in that particular document showing Mr. Bender's name?

(197) Mr. Knachel: Objection.

The Court: Well now, how do you explain that as redirect?

Mr. Kiernan: It was opened up.

The Court: In what way? You can ask him why he was interested in it, that had Mr. Bender's name on it, or why he put Mr. Bender's name on it.

Mr. Knachel: Well, he testified that Kennedy told him to come here and investigate Bender.

The Court: Yes. Go ahead. Let's see if we can ever get through with the witness. Ask your question.

Mr. Kiernan: I won't belabor the point, your Honor.

Q. Now, Mr. Sheridan, on direct examination you were asked concerning a cancelled check of Joint Council 41 in the amount of $824. To refresh your recollection, could you say from a reference to the committee hearings when you testified whether or not the cancelled checks and the receipts and disbursement book of Joint Council 41 were not at that time in the possession of the committee?

Mr. Knachel: I object to that.

(198) The Court: He may answer that.

A. I recall that some of the records were in the possession of the committee, yes.

Q. Do you recall whether the cancelled checks for the year 1955 of Joint Council 41 were in the hands of the committee?

Mr. Knachel: So there won't be any doubt about it, we have the receipt that Mr. Riebesell had for those checks.

A. I believe they were.

Mr. Knachel: We want to—

The Court: Wait. Proceed orderly. Let the witness finish the answer.

Mr. Kiernan: Your Honor, I will withdraw the question if we will stipulate that those records were in the hands of the committee.

Mr. Knachel: The cancelled check involving Rudolph Deutsch and the check stub was in the hands of their field office here in Cleveland before he went into Mr. Presser's office.

The Court: Is that the fact as you understand it? Is that the fact?

The Witness: Yes.

Mr. Kiernan: And the Government would (199) like to stipulate that into the record, your Honor.

Mr. Knachel: Certainly.

The Court: All right. No question about it.

(200) Q. Now, Mr. Sheridan, going back to these mysterious dates of September 9th and 10th, when—

Mr. Knachel: I object to that phraseology.

The Court: Yes, that isn't proper.

Q. When the records of the Committee show that you were in Washington— A. Yes, sir.

Q. Would you examine the particular document showing those dates and tell in what particular respect your name is mentioned? A. At the beginning of each day's hearing there is a summary indicating the time that the hearing opened, the fact that it was a meeting of this Committee, and that the Chairman was Senator McClellan, and it indicated what other members of the Committee were present; and then below that "Also present" and lists several staff members who are indicated as being present.

Mr. Knachel: And you're one of them.

Q. Now, Mr. Sheridan, could you make reference to this particular hearing that was recorded on that day and tell the Court and jury whether, as a matter of fact, you were there on the 9th of September? A. I have reviewed what the hearing was. I was not present at that hearing.

Q. And you know you were not present? (201) A. I know I was not present.

Q. There is no question in your mind that you were not there? A. No, there is not.

Q. You were not called as a witness, and the record does not show you were called? A. No, it doesn't.

Q. Now, again directing your attention to the 10th, would the same story apply, sir? A. Yes, sir, it would.

Q. And again on the 11th, Mr. Sheridan? A. Yes, sir, it would.

Q. And there is no question in your mind but that you were not before the Committee in Washington on the 9th, the 10th, or the 11th of September? A. No, there is not.

Q. And you were here in Cleveland? A. Yes, sir.

Q. The only way your name appears is a general statement at the start of the hearing saying who generally were present? A. Yes, sir.

Q. But that is not correct, you say, because you were not at the hearings held on those particular days? A. No, this type of information has been inaccurate in the past.

(202) Q. You say it has been inaccurate in the past? A. Yes, sir, as to who was present at the hearing.

Q. And, of course, if you were present or were not present would not be material to the particular hearing that day, would it?

Mr. Knachel: Oh, I object to this.

The Court: Yes.

Mr. Knachel: My reason for objecting is that the Government and the defense entered into a stipulation suggested by the Government that the transcript of the hearings was a true and accurate transcript of the proceedings and accurately reflects the questions asked and answers given. Now, where are we here? He says he wasn't there. That's good enough for me.

The Court: The record doesn't show he was asked any questions, does it?

Mr. Knachel: On those dates, no.

The Witness: I think I can clear it up, if I may.

The Court: Go ahead.

The Witness: There is certainly no question of the accuracy of the transcript, that is, the questions and answers and information that is contained therein. However, the information as to who **(203)** was present from the staff was information somehow acquired by the court reporters and was not always accurate. I have been shown as present in the past at other hearings when I haven't been present there.

Mr. Knachel: Well, those were errors on the part of the court reporter?

The Witness: I know that I have also been present at hearings where I was not listed as being present.

Q. Now, Mr. Sheridan, on cross examination you testified that the torn invoice was not brought by you to any Government agency to be dusted for finger prints, or to be examined, is that what you said? A. That is correct.

Q. When you picked up that invoice what was your job and what were your duties? A. My job was investigating for the Committee. My duties in connection with that was to, in this instance—there was an awareness on my part that a destruction of a record had taken place. In my opinion it was a pertinent record, and my job at that point was to report that fact back to the chief counsel.

Q. Did you have any authority on your own to institute any sort of a criminal proceeding based on the destruction of that record? (204) A. No, sir.

Q. Did you have any authority to turn that record over to anyone but the Committee? A. I could have turned it over to the FBI.

Q. Without permission of the Committee? A. No, I would have had to go through the Chief Counsel of the Committee.

Q. I ask you again, Mr. Sheridan: without permission of the Committee, did you have authority on your own to turn that document over to anybody?

Mr. Knachel: I object to that.

A. No.

Q. You did not? A. No.

The Court: It may remain.

Q. Mr. Sheridan, was a hearing coming up a few days after your arrival here? A. Yes, sir.

Q. You picked that document up on the 13th, a Saturday? A. Yes, sir.

Q. And there was a hearing at which you appeared and testified as to that document on the 17th? A. That's correct.

Q. And as I recall, at that hearing you testified that you had been here in Cleveland—

(205) Mr. Knachel: I object to his testifying.

The Court: Yes, the form of your question is putting the answer in the witness' mouth.

Mr. Kiernan: May it please the court, I am merely trying to save time.

The Court: No, you can't save time that way. You will have to ask the witness to tell us what he did.

Q. Was there a hearing on the 17th? A. There was a hearing on the 17th in Washington, at which I testified concerning this document which I had obtained here in Cleveland on the 13th of September.

Q. And the Committee was interested at that hearing—

Mr. Knachel: Wait a minute. I object to this speech.

The Court: Yes. Mr. Kiernan, you don't seem to understand. You are testifying and then asking him if that's so. You must ask him what happened.

Q. Well, after this hearing, as you have testified, Mr. Sheridan, did the Committee refer this case to the FBI? A. To the Department of Justice.

Q. To the Department of Justice? A. Yes.

Q. And in due course the FBI picked up these records? (206) A. Yes, they did.

Q. I believe you testified also on cross examination, Mr. Sheridan, that you had no training as an investigator after you left school, is that correct, sir? A. Between the time I left school and the time I went to the FBI.

Q. Then the only training you did get was as an FBI agent, is that right, sir? A. As an FBI agent and with the National Security Agency and, of course, with this Committee. The only formal investigative training as such was with the FBI.

Q. Do you know of any school or any course of training which is reputed to be better than the FBI for investigating?

Mr. Knachel: Oh, now, I object.

The Court: Yes, I will sustain the objection. That's immaterial.

Mr. Kiernan: It was opened up on cross examination, your Honor.

The Court: It's immaterial.

Mr. Kiernan: No further questions.

The Court: That's all, Mr. Sheridan.

(Thereupon the jury was instructed by the court and an adjournment was taken to 10:00 A. M. on Thursday, June 2, 1960.)

* * * * *

(207) Thursday, June 2, 1960, 10:00 o'clock, A. M.

The Court: All right, we are ready to proceed. Call your next witness.

Mr. Kiernan: We will call Mr. Donald Feder.

Thereupon the Government called as a witness J. DONALD FEDER who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION OF J. DONALD FEDER.

By Mr. Kiernan:

Q. Mr. Feder, would you please state your full name and address? A. J. Donald Feder; 2471 Channing Road, University Heights.

The Court: Spell your name, please.

The Witness: F-e-d-e-r.

Q. What is your business or occupation, Mr. Feder? A. I am a jeweler.

Q. And the name of the company? A. The Rudolph Deutsch Company.

Q. Could you describe briefly the nature of the Rudolph Deutsch Company? A. The Rudolph Deutsch Company is composed of three (208) separate enterprises. The Rudolph Deutsch Retail Division, which is in the business of retailing jewelry and related items; the Wholesale Division, which is in the business of cutting and selling loose diamonds and diamond jewelry to other jewelers; and the Rudolph Deutsch Industrial Sales Company, a company that sells industrial gifts, awards and premiums to industry and to organizations.

Q. Now, with particular reference to the Rudolph Deutsch Industrial Sales Company, sir, in 1955 could you state who was in charge of that particular organization? A. I was.

Q. Who was your main salesman? A. Mr. Charles Shaefer.

Q. In September 1958, did it come to your attention that the McClellan Committee was interested in a certain transaction that Ruloph Deutsch Company allegedly had with the Teamsters Joint Council 41? A. It did.

Q. Would you tell the Court and Jury, please, how that came to your attention? A. A gentleman presented his credentials to me in September of 1958, and he was a Mr. Sheridan, an investigator for the McClellan Committee. Mr. Sheridan said that he (209) wanted certain records of the Rudolph Deutsch Industrial Sales Company.

Q. And, more specifically, did he say what record he wanted, or what records he wanted? A. He wanted the records concerning a sale made by the Rudolph Deutsch Industrial Sales Company to the Teamsters Union.

Q. Were you able to furnish him with that record? A. I was.

Q. Do you recall more specifically what date it was that Mr. Sheridan appeared at your offices? A. No. I do not recall the specific date, but I do recall that it was on a Saturday.

Q. Now, Mr. Feder, was there any occurrence shortly prior or shortly subsequent to the date of Mr. Sheridan's visit that would help you pinpoint the date or the day when he appeared there? A. The only reason that I vividly know that it was a Saturday is that the offices close at noon on Saturday. Mr. Sheridan came to see me shortly after noon and it was necessary for me to go up to the offices and open the files to give him the information that he wanted.

Q. Now, sir, had there been a man connected with the company by the name of Samuel Deutsch? (210) A. Yes, sir.

Q. Could you state whether or not he has passed away? A. He has, sir.

Q. With reference to the time he passed away, could you say whether Sheridan's visit was before, after, or how long on either side? A. I am not sure of the exact date, Mr. Kiernan.

Q. Well, subsequent to the time that Mr. Sheridan appeared, did any event receive some public notice which came to your attention?

Mr. Knachel: Objection, your Honor.

The Court: What is the purpose of that?

Mr. Kiernan: I am merely attempting, to the extent possible, your Honor, to pin down the particular date, or the date of the month, when Mr. Sheridan appeared.

The Court: Well, he can fix the time when Mr. Sheridan appeared with reference to another event.

Q. Well, sir, did any event occur shortly before or shortly after which received certain newspaper publicity which may or may not have to do with the transaction Sheridan had asked you about? A. I am trying to reconcile this with the exact date (211) of Mr. Deutsch's death.

Q. Well, passing from Mr. Deutsch's death for the time being, sir—

The Court: Do you know when Mr. Deutsch died?

The Witness: I believe it was in September of 1958.

The Court: You can't be sure whether this visit of Mr. Sheridan was before or after that, can you?

The Witness: I believe it was just after Mr. Deutsch's death.

Q. You say you believe it was after Mr. Deutsch's death? A. Yes, sir.

Q. Could you state whether or not subsequent to Mr. Sheridan's appearance in your office there were any stories in the papers concerning, to some extent, the subject matter of your conversation with him?

Mr. Knachel: Objection.

The Court: He may answer. It is merely for the purpose of fixing the time.

A. Yes, shortly after Mr. Sheridan's visit to our office, a newspaper story appeared in the paper concerning some champagne buckets, and publicity was given to (212) the Rudolph Deutsch Industrial Sales resulting in the sale of these champagne buckets.

Q. And in your mind, sir, whether or not you connected up this publicity with Mr. Sheridan's previous visit?

Mr. Knachel: Oh, I object to this. It is leading in form anyway.

The Court: Yes. Can you now say whether what you saw was before or after Sheridan's visit?

The Witness: This was immediately following Mr. Sheridan's visit to Rudolph Deutsch Company.

The Court: Subsequently?

The Witness: Yes.

Mr. Kiernan: Please mark this as Government's Exhibit 15.

(Thereupon the document referred to was marked by the Clerk Government's Exhibit 15 for identification.)

(213) Q. Mr. Feder, I will hand you what has been marked Government's Exhibit 15 for purposes of identification, which purports to be a certified copy of a death certificate, and ask whether or not that would refresh your recollection as to the date of Mr. Deutsch's death? A. Yes, sir.

Q. And the date of Mr. Deutsch's death? A. September 4, 1958.

Q Now, Mr. Feder, you have testified that you did produce a certain document to Mr. Sheridan when he entered your office, is that correct? A. Yes, sir.

Q. I will hand you Government's Exhibit 13 and ask if you can identify that, please? A. This is a copy of a Rudolph Deutsch Industrial Sales Company invoice dated September 8, 1955, in which the Teamsters Joint Council 41 was sold eight champagne masters at $100 each.

Q. Could you state whether or not that particular document has anything to do with your company, sir? A. This is the sales invoice in which a charge was made to the Teamsters Joint Council for eight champagne masters.

Q. Is it the original sales invoice? A. This is the duplicate sales invoice. The original sales invoice is sent to the customer. This is our duplicate **(214)** or office copy.

Q. Now, Mr. Feder, I will hand you what has been marked Government's Exhibit 12 and ask if you can identify that, please, sir? A. This is the original sales invoice of which this yellow sheet is our duplicate copy or office copy (indicating). The white sheet is the original invoice that goes to the customer.

Q. Now, Mr. Feder, if you will hold these two invoices together, the original and the duplicate so as to make them even at the top, do you notice whether or not the duplicate seems to be longer than the original? A. The duplicate is longer than the original, yes, sir.

Q. Could you state whether or not the original is in its normal or natural state, sir?

Mr. Knachel: Objection.

The Court: He may answer.

A. The original invoices of our company are the same identical size as the duplicate invoices.

Q. Is it the practice in your company, sir, to send out original invoices which are either made shorter or torn as the original which you have in your hand seems to be? A. No, sir.

Q. Would you state, sir, do you have actual knowledge as to whether or not the original that you hold in your hand (215) was in the same form as the duplicate when it was sent from your company? A. Well, I—the practice in our company is that the—

Mr. Knachel: Object to that.

The Court: He may answer.

Mr. Knachel: The question is of his own knowledge, your Honor.

The Court: Well, he is the man that handled it.

Mr. Knachel: No, he isn't. Mr. Shaefer handled the sale, or some girl in the office.

The Court: Well, he already said that the original is always the same size as the duplicate.

Mr. Kiernan: I will withdraw the question.

Q. Now, Mr. Feder, at the time that Mr. Shaefer appeared in your office—

Mr. Knachel: Mr. who?

Q. Excuse me. Mr. Sheridan appeared in your office, did he inquire as to who the salesman would have been who handled this particular transaction? A. He did, sir.

Q. And can you recall whether or not you told him? (216) A. I did. The initials CS appeared at the bottom left-hand corner of the invoice which indicated to us that our salesman Mr. Charles Shaefer made the original sale on that transaction.

Q. Now is Mr. Charles Shaefer still in the employ of your company, sir? A. He is not, sir.

Q. Could you state when he left? A. Mr. Schaefer left our company, I believe, at the end of 19—I believe at the beginning of 1956.

Q. Did he leave under good terms, sir?

Mr. Knachel: I object to that.

The Court: Yes, he may answer.

A. Originally the terms were favorable, yes.

Q. Did the terms remain favorable afterwards, sir?

Mr. Knachel: I object to this.

The Court: Well, what is the relevancy?

Mr. Kiernan: It is very relevant.

Mr. Knachel: Mr. Shaefer is in business in town.

Mr. Kiernan: This is very relevant.

The Court: Well, he may answer it, then, if there is some point that goes to our matter here. I will assume that there is, (217) otherwise it will be excluded. Let's find out first what it is.

A. Subsequently the relationship between Mr. Shaefer and our company deteriorated. He was no longer on the most friendly terms with us.

Q. About how long after he left would you say that the relationship deteriorated?

Mr. Knachel: Objection.

The Court: He may answer.

Mr. Knachel: Exception.

A. Perhaps six months after he left.

Q. And that would be approximately the middle of 1956, sir? A. Yes, sir.

Q. Now from that time when you said the relationship deteriorated, did you have any social contact with Mr. Shaefer?

Mr. Knachel: Objection.

The Court: I don't yet see what the relevancy is

Mr. Kiernan: Your Honor, it will become apparent.

The Court: I will exclude it if it doesn't.

Mr. Knachel: All through this he says he is going to connect it up and he (218) never has.

The Court: Well, let's see what happens.

A. Your question was whether there was any social contact with Mr. Shaefer?

Q. That is right. A. There was no social contact with Mr. Shaefer.

Q. Well, did you have occasion as a general course during this period to have any conversations with him of any type?

Mr. Knachel: Objection.

The Court: He may answer.

A. There may have been business questions. I believe that prior—between the time he left and, say, for the next six-month period I believe I did talk to Mr. Shaefer on several occasions concerning business matters that may have come up prior to his leaving our employ.

Q. Now, Mr. Feder, the question is directed towards the period after the relationship deteriorated. A. I had no occasion at any time to talk to Mr. Shaefer.

Q. Did he at any time as a general practice have occasion to make telephone calls to you?

Mr. Knachel: I object. He said he had no occasion after he left there.

The Court: Is your answer the same?

(219) The Witness: It is the same, sir.

Q. Now, Mr. Feder, getting back to Mr. Sheridan's visit, you testified that he asked you who the salesman was and you said that the initials CS referred to Charles Shaefer. Did you have any further conversation with Mr. Sheridan at that time concerning Mr. Shaefer? A. Yes. Mr. Sheridan asked me at that time when I had seen or spoken to Mr. Shaefer last. I told him that I hadn't seen Mr. Shaefer or talked to him for several years, but strangely enough I had received a phone call from Mr. Shaefer several days prior to Mr. Sheridan's visit.

Q. Well, to refresh your recollection, sir, did you say one or two days prior? A. I did, sir.

(Article marked for the purposes of identification as Government's Exhibit 16.)

Q. Mr. Feder, I will hand you what has been marked Government's Exhibit 16 for purposes of identification, and ask if you can identify it, please? A. This is the tissue copy sales book in which the transaction of December 8, 1955—this is a reference or file copy of the original sales book in which this transaction to Teamsters Joint Council 41 of December 8, 1955, is in this book.

Q. Now, Mr. Feder, could you state how that book looks in (220) its original state? A. In its original state there are—the top page is a white page or the customer's copy of the sale. The tissue copy is a reference copy. It is done in triplicate. The page following the tissue copy is the yellow copy or our office copy of the transactions.

Q. Now, Mr. Feder, could you state whether or not there is carbon paper normally between these different copies? A. There is normally carbon paper between these copies, yes.

Q. Will you state, Mr. Feder, as a matter of practice in your company whether or not the three copies would be made out at the same time? A. Yes, the three copies would be made out at the same time.

Q. Now I will draw your attention, sir, to copy No. 1670 and ask you to compare it to the original which you have previously identified, that is Government's Exhibit 12 and Government's Exhibit 13, and ask whether in your opinion, they constitute a set in their original form? A. Yes, they do.

Q. Now, sir, could you read from your flyleaf copy—pardon me. Strike that. Is this document kept by your company or made by your company in the regular course of business, sir? A. Yes.

Q. And is it the regular course of business to make these (221) copies in such a manner? A. It is, sir.

Q. And is it preserved by your company in the regular course of business? A. It is.

Mr. Kiernan: It is offered, your Honor, as Government's Exhibit 16.

The Court: It may be received.

Q. Now directing your attention to Government's Exhibit 16, sir, would you state whether or not the original invoice contains all of the information in its present state contained in your flyleaf copy? A. It does not, sir.

Q. And will you state in what respect they differ? A. There is a list of eight names at the bottom of our flyleaf copy. These names were to be engraved on the gift items. And on the original these eight names do not appear.

Q. Would you state as a matter of practice, sir, whether those eight names should have appeared on the original? A. The original invoice is a duplicate of both the flyleaf copy and the office copy.

(222) Q. Well, then, in the regular course of business, sir, would you state whether or not this invoice, when it was sent to the customer, would have contained the eight names which are listed on your flyleaf copy? A. It would, sir.

> Mr. Kiernan: Please mark these documents Government's Exhibits 17 and 17-A for identification.
>
> (Documents referred to were marked by the Clerk Government's Exhibits 17 and 17-A for identification.)

Q. Mr. Feder, I will hand you what has been marked Government's Exhibit 17 for identification and ask you if you can identify it, sir (handing exhibit to witness). A. This is a memorandum copy of an order that was brought in by a salesman. It is the order for eight champagne masters for the Teamsters Joint Council No. 41. This is our memorandum sheet for purposes of our own individual records, so that we might order the merchandise from the manufacturer, properly engrave them and ultimately make delivery as requested by the customer. This is an inter-office memorandum.

Q. Could you state whether or not this memorandum is in the nature of a history of the transaction? **(223)** A. It is, sir.

Q. Is this memorandum a regular business record of your company, sir? A. It is a regular business practice. I am not sure what a regular business record is—what you mean by that.

Q. Well, at the time this memorandum was made, Mr. Feder, was it the regular course of business of your company to make a memorandum of this type? A. Yes, it was; all salesmen made this type of memorandum.

Q. And was it preserved in your company in the regular course of business, sir? A. It was.

Mr. Kiernan: Government's Exhibit 17 is offered in evidence, your Honor.

The Court: It may be received.

Q. Directing your attention again to Government's Exhibit 17, sir, could you by making reference to that memorandum give the Court and jury the history of this particular transaction with Teamsters Joint Council 41? A. Yes, sir, I can.

Q. Would you do so, please? A. Yes, the order was brought in by a salesman "C. S." which is Charles Shaefer, for eight champagne masters at $100 each. The order was received by Mr. Shaefer (224) from Teamsters Joint Council No. 41. This memorandum indicates to us that this merchandise was ordered from the Ami Company on November 3, 1955. It also indicates that these items were to be engraved, and the engraving instructions are stated on this memorandum. It also indicates that Mr. Shaefer will give us the ultimate disposition of these goods when they arrive. It indicates that the masters were individually gift-wrapped, and that the names of the individuals were to be marked on the outside of the package so it wouldn't be necessary for the recipients to open the packages to see the names, and that this merchandise was delivered to the address, 2070 East 22nd Street.

It further indicates that the merchandise was charged to the Teamsters Joint Council on December 8, 1955, under our invoice number 1670.

Q. Now, with particular reference to the name "Bender" appearing on the sales record, did it spell out how the name should be engraved? A. Yes, sir, it did: "Senator Geo. Bender."

Q. And with reference to the name "Beck"? A. Yes, sir: "Dave Beck."

Q. And Hoffa? A. "James R. Hoffa."

(225) Q. Dorfman? A. "P. Dorfman."

Q. English? A. "John English."

Q. And Brennan? A. "B. Brennan."

Mr. Kiernan: Please mark these documents Government's Exhibits 18-A, 18-B, 18-C and 18-D for identification.

(Documents were marked by the Clerk Government's Exhibits 18-A, B, C and D for identification.)

Mr. Kiernan: May it please the Court, it has been stipulated by counsel for the Defendant and the Government that Government Exhibits 18-A, B, C and D are records of the Ami Company kept in the regular course of business, and that they are authentic.

The Court: All right.

Q. Mr. Feder, you testified that your record shows this order went to the Ami Company, is that correct, sir? A. That is right, sir.

Q. Now, I will hand you what has been marked Government's Exhibits 18-A, B, C and D for purposes of identification, (226) and ask you if you could describe to the Court what they are? A. This is a copy of the Rudolph Deutsch Industrial Sales Company—

Q. Excuse me. For the record, the document you have in your hand has been marked Government's Exhibit 18-A, is that correct, sir? A. Yes, sir. This is a record of the Rudolph Deutsch Industrial Sales Company's order to the Ami Company for—

Q. It covers the champagne masters which you have discussed before, does it, sir? A. It does, sir.

Q. And does the order to the Ami Company order inscribing the champagne masters that were ordered from them in the manner you have testified? A. Yes, the order states they are to be engraved per instructions.

Mr. Kiernan: The Government offers Exhibit 18-A in evidence, your Honor.

The Court: All right, received.

Q. With respect to the next document, sir? A. This is the memorandum of shipment from the Ami Company giving us the instructions that the champagne masters would be shipped from the Ami Company in Buffalo to (227) our company.

Mr. Kiernan: Government's Exhibit 18-D is offered, your Honor.

Q. With reference to the next item, sir? A. This is a copy of the Ami Company's invoice to the Rudolph Deutsch Industrial Sales Company for champagne masters that were delivered and engraved by the Ami Company to our company.

Q. Does this record indicate whether or not your company paid the Ami Company, sir? A. Yes, sir, it does. Our company paid the Ami Company on this invoice.

Mr. Kiernan: The Government offers Exhibit 18-C.

Q. The next document, sir? A. The next document is a purchase order from the Ami Company to the Allied Engraving & Stamping Company of Buffalo, New York, in which they have ordered the champagne masters to be engraved by the Allied Engraving & Stamping Company.

Mr. Kiernan: The Government offers Exhibit 18-B in evidence, your Honor.

(Thereupon documents were marked by the Clerk Government Exhibits 19 and 20 for identification.)

(228) Q. Mr. Feder, I will hand you what has been marked Government's Exhibit 19 for purposes of identification and ask you if you could identify it, please? A. This is a copy of the Rudolph Deutsch Industrial Sales Company's sales register for the period 1955 through 1957.

Q. Directing your attention to page 16, item 34. A. Item 34 represents a sale made to the Teamsters Joint Council under our invoice No. 1670 for merchandise in the amount of $800 plus Ohio State Sales Tax of $24.

Q. That would be the same transaction that you have testified to before, sir, is that correct?. A. Yes, sir.

> Mr. Kiernan: The Government offers Government's Exhibit 19.

Q. Directing your attention to Government's Exhibit 20 for purposes of identification, sir. A. This is the cash receipts register of the Rudolph Deutsch Industrial Sales Company covering the period 1955 through 1957.

Q. Now, directing your attention to Page 15, item 24. A. Item 24 is a record that payment of $824 was made on December 31 on the transaction referred to.

Q. That would be the transaction you had with the Joint (229) Council No. 41? A. That's right, sir.

Q. That record shows that Joint Council 41 paid for the champagne masters, is that correct, sir? A. That's right, sir.

Q. Well, does that indicate the check number used in payment? A. No. 8302.

> (Thereupon a document was marked by the Clerk Government's Exhibit 21 for identification.)

> (230) Mr. Kiernan: May it please the Court, the Government and the Defense have stipulated that the approximate weight of the champagne buckets involved in this case were approximately 14½ pounds each.

Q. Mr. Feder, I will hand you what has been marked Government's Exhibit 21 for purposes of identification and ask if you can identify that? A. Yes. This is a sales folder describing the merchandise sold by the Ami Company, the front cover of which describes the champagne masters and pictures the use of this champagne master.

Q. And does the front page of this exhibit depict the champagne master involved in this particular case, sir? A. It does, sir.

Mr. Kiernan: Government's Exhibit 21 is offered in evidence, your Honor. No further questions.

The Court: Any cross examination?

CROSS EXAMINATION OF J. DONALD FEDER.

By Mr. Knachel:

Q. Mr. Feder, you don't remember what Saturday in September of 1958 Mr. Sheridan came in, do you? A. No, sir, I do not.

Q. Now we have had numerous exhibits which the Government (231) has questioned you on. Were all of these exhibits available to Mr. Sheridan when he came in there? A. No, sir.

Q. Were all those records in your company? A. No, sir, they were not.

Q. Which records weren't? A. There was a record on which the Ami Company ordered the engraving to be done by Allied Engraving & Stamping in Buffalo which would—

Q. We have stipulated on those. But I mean all the records of your company? A. All the records of our company would have been available to Mr. Sheridan, yes.

Q. At the time he came in? A. Yes, sir.

Q. And in September of 1958—strike that. Where is your place located? A. The Rudolph Deutsch Industrial Sales Company is in the Bulkley Building at 14th and Euclid Avenue.

Q. And during the month of September 1958 what days were you open and what were your office hours? A. The store was open Monday through Saturday. The hours were from 9:30—on Monday from 9:30 to 9:00 p. m. These are my hours. For the balance of the week I arrived at the store about 8:30 in the morning and left (232) at about 6:00 p. m.

Q. Now you are open how many days a week? A. Six, sir.

Q. Six days a week. How late are you open on Saturday? A. Until 5:30.

Q. And on all those days during the month of September, 1958, you were open, were you not? A. No, sir.

Q. What days weren't you open? A. We were not open on the day of the funeral of Mr. Samuel H. Deutsch.

Q. All right. And could you tell us what day that was? A. I cannot, sir.

Q. But outside of that you were open for business? A. On all other days of the week, yes.

Q. Do you know whether or not Charlie Shaefer, your former salesman, is now in Cleveland? A. I understand he is, sir.

Q. And in business? A. I believe he works for—I don't believe he is in business for himself, if that is what you mean.

Q. Where does he work, then? A. He works for a company by the name of Parker Hall.

Q. Is that on Euclid Avenue? A. I believe it is, sir.

(233) Mr. Knachel: I think that is all, your Honor.

The Court: You are excused. Call your next.

Mr. Kiernan: Call Mr. Cozza, Michael Cozza. May it please the Court, I have just been informed that my next witness, the accountant and attorney for the defendant, is not available at this time.

Miss Steuer: He will be available in about a 10-minute period.

Mr. Kiernan: My next witness is the accountant and attorney for the defendant and also for Joint Council 41. I have just been informed that he is not in the building as I expected he would be but that he would be here in about 10 minutes.

The Court: Well, call another witness.

Mr. Kiernan: Well, your Honor, the sequence—

The Court: Is he under subpoena? Why isn't he here? Is he under subpoena?

Mr. Kiernan: Yes, sir.

(234) The Court: Was he under subpoena?

Mr. Kiernan: Yes, your Honor.

The Court: Well then, he should be here. Call him up and tell him he is supposed to be here.

Miss Steuer: There was an understanding at one time that he would be available on call and that seemed to be agreeable to the Prosecuting Attorney here. But I will call him right away.

Mr. Kiernan: Call Special Agent Fred M. Miller.

The Court: It is a fact that counsel make arrangements with these witnesses that they will call them when they want them, and I don't believe that is the way we ought to proceed. They should be available at all times because the Court can't wait for witnesses. I am not directing this at any particular counsel. They should all be here. It is better that they should wait rather than the Court and everybody in the jury should wait.

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(235) Thereupon the Government called as a witness Fred M. Miller, who, being first duly sworn, was examined and testified as follows:

Direct Examination of Fred M. Miller.

By Mr. Kiernan:

Q. Will you state your full name, please? A. Fred M. Miller.

Q. And your business or occupation? A. I am a Special Agent of the Federal Bureau of Investigation assigned to the work of document examination which includes examinations of handwriting, typewriting, alterations, paper, inks and related matters.

Q. Where are your headquarters located? A. My headquarters are in the FBI Laboratory at Washington, D. C.

Q. How long have you been engaged in this particular type of work? A. For almost 25 years.

Q. Do you devote your entire time to this work, sir? A. Yes, I do

Q. What basic educational training have you received, sir? A. Well, I attended Indiana University where I received degrees of Bachelor of Arts, Master of Arts and Doctor of (236) Philosophy all in Chemistry.

Q. Could you state what you did to prepare yourself in a special way for the work you are doing now? A. Upon receiving my appointment with the FBI I pursued a course of study leading to document examination. I worked under the supervision of experienced examiners, I conducted examinations and read various books on the subject.

After reaching a certain degree of proficiency I was granted the authority to make examinations on my own responsibility, which I have been doing for many years.

Q. Could you state what assignments the FBI has given you as an instructor, sir? A. The FBI has assigned me the task of training new document examiners, of giving lectures and instructions to various groups which meet in Washington, and also to give lectures and instructions to police agencies throughout the United States.

Q. How many cases would you say you have examined, sir? A. Well over 12,000.

Q. Have you testified as an expert in State and Federal courts? A. Yes.

Q. U. S. court martials? A. Yes, many times.

(237) Q. Congressional committees? A. Yes, sir.

Q. Could you state approximately how many times in all, sir? A. About 200.

> Mr. Kiernan: May it please the Court, the Government submits that the witness Fred Miller qualifies as an expert.
>
> The Court: I don't think anybody raises any question about it.

Q. Now, Mr. Miller, directing your attention to the 18th of November, 1958, in the regular course of your duties with the FBI—

> Mr. Knachel: May I have that date?
> Mr. Kiernan: 18th of November.
> The Court: What was the date?
> Mr. Kiernan: The 18th of November, 1958.

Q. In the regular course of your business, sir, was there referred to you what purported to be an original invoice No. 1670 dated December 8, 1955, of the Rudolph Deutsch Industrial Sales Company to Teamsters Joint Council 41? A. Yes, there was.

Q. Was there also referred to your attention a copy of that invoice, a carbon copy? A. Yes, sir.

(238) Q. I will hand you what has been marked Government's Exhibits 12 and 13 and ask if you can identify them, sir? A. Yes, sir. These are the exhibits which I received on the 18th of November, 1958.

Q. Could you state what your assignment was with respect to those exhibits? A. I was requested to make an examination to determine whether there were any alterations on the original set.

Q. And did you make such an examination, sir? A. Yes, I did, using the approved methods for making examinations of this type. This included the use of a microscope, a binocular type microscope to determine if there were any changes in the surface of the paper and any changes in the fiber construction.

I also used a device known as an infra-red viewer to determine if I could pick up or develop any pencil writings which may have been obliterated, pencil writing being mostly graphite, chemically speaking.

I also examined it with the use of parallel light to determine if there were any changes in the surface of the paper.

Q. Now is there any particular section of the invoice to which you paid particular attention, sir? A. Yes. It was the section which corresponds to the names (239) "Beck" and "English" on the carbon copy. In other words, it is the area somewhat described as being the lower left-hand portion of the invoice, the place where the tear or near where the tear occurs.

Q. Well, for the benefit of the Court and jury, sir, would you hold up the carbon copy and the original so they could see it and point particularly to the portion that you paid particular attention to? A. Based on the carbon copy it was the area where the names Beck and English appear, if the two were superimposed over each other.

Q. Could you point to the original at the exact spot that those names would have appeared, sir? A. It would be the area right in here (indicating).

Q. Now, Mr. Miller, could you state what the results of these various tests you made were? A. I was unable to determine the identity of the original names, but I was able to state definitely that I did find alterations in the area where the names Beck and English appear on the carbon copy.

Q. Will you state what the nature of those alterations were, sir? A. They were in the nature of erasures accomplished by means of a mechanical device such as an eraser.

(240) Q. Could you state how you could tell that such alteration had been made by an erasure? A. Well, by the disturbance of the paper fibers with the use of a microscope.

Mr. Kiernan: No further questions, your Honor.

Cross Examination of Fred M. Miller.

By Mr. Knachel:

Q. Mr. Miller, isn't it? A. Yes, sir.

Q. Did you check—I didn't hear anything about your checking any impressions on the back of the invoice. That was not in your report, was it? A. I also checked the invoice on the back, which is a routine procedure in any examination of this sort.

Q. Did it show anything? A. Nothing unusual, no, sir.

Q. All right. Now, your instructions were to check for alterations. Did you have any instructions, or did anybody in your department have any instructions, to check for fingerprints? A. No, sir.

Q. Would that be one of your jobs? A. Ordinarily a fingerprint examination is not conducted (241) on evidence which has been handled extensively, as in this particular case and, furthermore, where the document is of any appreciable age, such as this apparently is, the fingerprints may well disappear over the period of time, because they do disappear within a reasonable period of time after they have been placed on the paper.

Q. What period of time would you say that would be from the time they were placed on the paper? A. It depends on the kind of paper—

Q. Well, that paper. A. Let me finish. It depends on the kind of paper, the time of year and the amount of moisture, and so on. To answer your question specifically, it is not possible to say just how long a fingerprint will remain on paper. It has been our experience over many years, and conducting many thousands of tests, that in the summertime the fingerprints disappear quite rapidly, maybe in a matter of a few days, whereas, in winter—

Q. Now, Mr. Miller, I am trying to cross-examine you as carefully as I can. I ask you to suppose that this invoice that you have in your hand was picked up by an investigator of the McClellan Committee in September of 1958. Your chances of picking up (242) fingerprints, your best chances for fingerprints would be within a few days after that, wouldn't it? A. Yes, sir, naturally.

Q. All right. Well, if you had a request for fingerprints, would you refer it to somebody in your department? A. Yes, sir.

Q. It would be under your supervision to do that? A. Yes, sir.

Q. Was any such request made? A. No, sir.

Q. At any time? A. No, sir.

Q. At any time from September up until November 18, 1958, was any such request made? A. Not to my knowledge.

Q. How long back has it been that you started instructing men in the FBI? A. At least 20 years ago.

Q. Did you have a pupil by the name of Walter J. Sheridan? A. No, sir.

Q. Do you recall—well, does everyone that goes into the FBI receive this training? A. I lecture to most of the new agents classes, and most (243) of the in-service classes that come to Washington. I don't know who the men in the class are most of the time.

Q. By name? A. By name.

The Court: That's all?
Mr. Kiernan: No redirect examination.
Mr. Knachel: I think that's all, your Honor.
The Court: That's all, Mr. Miller.
The Witness: May I be excused, your Honor?
The Court: You are excused entirely.
The Witness: Thank you.

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(244)

Thereupon the Government called as a witness MICHAEL E. COZZA who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION OF MICHAEL E. COZZA.

By Mr. Kiernan:

Q. Would you, please state your full name, sir? A. Michael E. Cozza.

The Court: How do you spell your name?
The Witness: C-o-z-z-a.

Q. And your business or occupation, sir? A. Certified Public Accountant and Attorney-at-Law.

Q. Could you state whether or not Joint Council 41 of the Teamsters is a client of yours? A. Yes, sir.

Q. And in what capacity? A. As a Certified Public Accountant and Attorney-at-Law.

Q. How long have you been the Certified Public Accountant and Attorney-at-Law for Joint Council 41? A. Since January, 1955.

Q. Do you recall who employed you at that time? A. Sir?

Q. Do you recall how you came to be retained by Joint (245) Council 41? A. Yes, sir. I was called by Mr. Presser, who interviewed me, and discussed the possibility of employment, and indicated that he would discuss it with the Executive Board and advise me.

Q. Could you state whether or not you are also the attorney and accountant for Mr. Presser? A. Yes, sir, I was.

Q. How long have you been his accountant and attorney, sir? A. Since shortly after January, 1955.

Q. Do you still hold that relationship with Mr. Presser? A. Yes, sir.

Q. So as of right now you are the accountant and an attorney for Mr. Presser? A. Yes, sir.

Q. And as of right now you are the accountant and an attorney for Joint Council 41? A. Yes, sir.

Q. Now, Mr. Cozza, among the various services that you may perform for Joint Council 41, do you from time to time represent that organization in responding to subpoenas? A. Yes, sir.

Q. And, to be more specific, subpoenas which would call for certain records or documents? **(246)** A. Yes, sir.

Q. You would appear in a representative capacity and produce those documents to the agency or body that subpoenaed them, is that correct, sir? A. Yes, sir.

Q. Directing your attention to the fall of 1959 and January of 1960, did you appear in Washington, D. C. on various occasions in response to subpoenas issued by a Grand Jury to Joint Council 41? A. Yes, sir.

Q. And on those occasions did you produce certain books and records of Joint Council 41? A. Yes, sir.

Q. And they were the authentic books and records of Joint Council 41, sir? A. I believe so; yes, sir.

Q. Now, did you subsequently appear before a Grand Jury here in Cleveland, sir, and identify for the Cleveland Grand Jury the books and records which you had produced in Washington before the Grand Jury there? A. I believe they were the same records; yes, sir.

Q. Well, did you testify that they were, sir? A. Yes, sir.

Q. And you testified truthfully to the best of your ability, is that correct, sir? **(247)** A. Yes, sir.

(Thereupon certain documents and records were marked by the Clerk Government's Exhibits 22 to 30, inclusive, for identification.)

Q. Now, Mr. Cozza, on one of your appearances in Washington, D. C., did you produce for the Grand Jury a power of attorney? A. Yes, sir.

Q. And a power of attorney which you stated you had observed Mr. Presser sign, is that correct, sir? A. Yes, sir.

Q. I will hand you what has been marked Government's Exhibit 22 for purposes of identification, and ask you if that is the power of attorney you produced before the Grand Jury in Washington? A. Yes, sir, it is.

Q. And, again, your testimony was that you saw Mr. Presser sign this power of attorney? A. Yes, sir.

Q. Would you state, therefore, that that is Mr. Presser's signature appearing on the bottom of that document? A. Yes, sir, it is.

Mr. Knachel: I wonder if we could have the date, or establish some time when this power of attorney was issued.

(248) Q. Would you make reference to the document, Mr. Cozza, please? A. This is a power-of-attorney executed on December 30, 1959.

Mr. Kiernan: May it please the Court, the Government offers Exhibit 22 for the purpose of establishing Mr. Presser's signature.

The Court: All right.

Q. Mr. Cozza, I will hand you what has been marked Government's Exhibit 23 for purposes of identification, and ask you if you can identify that, sir, please? A. Exhibit 23, which I have before me, is the cash disbursements book of Joint Council No. 41 for the year 1955.

Q. I will hand you what has been marked Government's Exhibit 24 for purposes of identification, and ask you if you can identify that, please, sir? A. Exhibit No. 24, which I have before me, consisting of cancelled checks and stubs of Joint Council 41 commencing with No. 8181 appears to cover the period November 29, 1955 through December, 1955.

Q. I will hand you what has been marked Government's Exhibit 25 for purposes of identification and ask you if you can identify it, please, sir? (249) A. Exhibit No. 25, which I have before me, appears to cover Executive Board meetings of Joint Council 41 commencing Monday, February 21, 1955.

Q. I will hand you what has been marked Government's Exhibit 26 for purposes of identification, and ask you if you can state what that is, please? A. Exhibit 26 appears to be the regular meetings of Joint Council No. 41 commencing January 20, 1958.

Q. And this was an exhibit that you produced in Washington as being the authentic record of Joint Council No. 41, sir? A. Yes, sir, I believe so.

Q. I will hand you what has been marked Government's Exhibit 27 for purposes of identification, and ask you if you can identify that, sir, please? A. Exhibit 27, which I have before me, appears to be the cash disbursements book of Joint Council 41 for the period—it appears to cover the period July 1, 1958 through December 31, 1958.

Q. And that is a document produced by you before the Grand Jury in Washington, is that correct, sir? A. I believe so; yes, sir.

Q. And you also produced that document before the Grand Jury here in Cleveland and testified that it was an (250) authentic book or record of Joint Council No. 41? A. I believe so, sir.

Q. Directing your attention to what has been marked Government's Exhibit 28 for purposes of identification, I ask you to state what that is. A. Exhibit 28 consists of the International Constitution of the Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, which was adopted September 30 to October 5, 1957. In addition thereto, Exhibit 28 seems to contain the By-Laws of Teamsters Joint Council 41.

Q. I will hand you what has been marked Government's Exhibit 29 for purposes of identification and ask you if you can identify that, please? A. Exhibit 29 consists of what appears to be the check stubs and cancelled checks of Teamsters Joint Council No. 41 commencing with Check No. 11301 covering the period August 1, 1958 through September 30, 1958.

Q. I hand you what has been marked Government's Exhibit 30 for purposes of identification and ask you if you can identify that, sir? A. Government's Exhibit No. 30 appears to consist of various correspondence of the Teamsters Joint Council No. 41 for the period August and September, 1958.

Q. And this is the folder that you testified to before the (251) Cleveland Grand Jury, sir, to the extent that it was the correspondence of Joint Council 41, is that correct? A. Without having gone through each one—

Q. Is there any question in your mind, sir, as to whether or not it is? A. Well, as I turn this over, and it is the folder, I don't know what happened to it after I turned it over, and all I am saying is that it contains correspondence for that two-month period. If anything happened since then—

Q. Well, unless somebody in the Government would have inserted something that didn't properly belong there, would this constitute—

Mr. Knachel: Oh, I object to that.

The Court: What did you say, Mr. Cozza?

The Witness: The question was asked of me if this contained all correspondence which I produced to the Grand Jury a few months ago, and I testified that this is correspondence of Joint Council 41 for the months of August and September, and there are numerous pieces of correspondence in there and they would not be listed individually, so that I wouldn't know if it was all of what I turned over or less, (252) or anything like that.

The Court: You didn't examine them at the time, each individual sheet?

The Witness: No, your Honor.

Mr. Kiernan: No further questions along that line, your Honor.

(253) Q. Now, Mr. Cozza, did it come to your attention a few days ago that the Government had served a subpoena on Joint Council 41 calling for the production of certain records prior to this trial? A. On Tuesday morning here in this room you called my attention to it, yes.

Q. And such a subpoena had been served on Joint Council 41 some few days before, is that not correct? A. I would have no way of knowing that, sir, because the first knowledge I had of it was when you told me at approximately 11 o'clock Tuesday morning.

Q. Yes. Well, didn't the counsel for the defendant also inform you with me that a subpoena had been issued to Joint Council 41 calling for certain records? A. You mean while you were informing me Tuesday morning?

Q. Yes. A. I think so, yes.

Q. More specifically we were all together in the outer room of the Judge's chambers, is that not correct? A. Yes, I believe so.

Q. And you were designated to obtain the records which were subpoenaed from Joint Council 41, is that not correct? A. Whatever the subpoena called for, yes.

Q. Now, Mr. Cozza, did not the subpoena call for all financial statements of Joint Council 41 for the years (254) 1955 and 1956? A. I believe so, yes.

Q. And were you able to produce those financial statements, sir? A. I checked for them and I haven't been able to locate them yet. We are on very limited time as I was on standby notice and spent most of my time here, sir. Those are old statements. You are going back five years.

Q. Well, to answer the question have you found those old statements? A. As of yet, no, due to the lack of time to look for them.

Q. Were you also requested to produce records of any and all meetings of any type, nature or description of Joint Council 41, its officers or executive board for September 1958? A. Yes, sir.

Q. And were such minutes or records found, sir? A. No, sir. I am not sure whether they are here already or whether you have them all or not, but there weren't any that I could locate.

Q. A search was made for both of these records that I have mentioned, sir? A. Yes.

Mr. Knachel: Let me clear this up, didn't Charlie Bonn, isn't he the fellow (255) that has the minutes?

The Witness: Yes. He ordinarily is charged with the responsibility of having the minutes, and I haven't been able to reach him.

Mr. Knachel: I may be partially responsible for this and I am trying to help. I have the minute book in my office that has photostatic copies of minutes. Now maybe that is what you are looking for. If I am directly involved I will bring it in here.

The Court: Well, if it is material.

Q. And a search was made for the financial statements, is that correct? A. Yes.

Q. Could you describe the nature of the search that was made? A. Well, I examined our files. I examined all the current files and files for the last few years to see if we had copies available, and there weren't any. Now there might be some older files that I may have that are put away that I can look for, but I haven't had the chance to, yet. This has been awful short notice. Today is Thursday.

Q. Will you continue your search for those records? A. Yes.

(256) Q. Have you already looked in the place where those records normally would be kept? A. Well, when you say normal, I can't actually answer that question because this—

Q. Well, sir, normally in your business. I certainly couldn't answer the question. What is normal in your business for keeping the records of Joint Council 41? A. I am able to answer your question if you will permit me to.

The Court: Go ahead.

A. The record you are asking for is an old record going back to 1955. In our business normal consists of the last two or three years. When you go back to 1955 it is usually considered an old record and you don't keep them as easily available as the current records which are usually constantly in use. So I have made the normal search there.

Q. Now, Mr. Cozza, directing your attention to the years 1955 and 1956, you have testified I believe that you were an accountant and attorney for Joint Council 41? A. Yes.

Q. Would you state whether or not in those years you personally handled the books and records of Joint Council 41? A. Yes, sir.

(257) Q. Now since that time, sir, does someone who may be an employee of yours and your partner, Miss Steuer, handle the books and records of Joint Council 41? A. Well, the initial work is done by an employee then I follow up, sir.

Q. Well, to the extent that office contact would be made, there is an employee of yours who represents you in going to the offices of Joint Council 41, is that correct? A. Yes, sir.

Q. And her name is what? A. Mrs. Lillian Tavensky.

Q. Now, Mr. Cozza, I will direct your attention to Government's Exhibit 12, an invoice of Rudolph Deutsch Industrial Sales Company, which purportedly was a record of Joint Council 41 in the years 1955 or 1956, the end of '55 and '56, and ask if in the course of your official duties with Joint Council 41 you ever saw that invoice? A. No, sir.

Q. Now since that time, directing your attention to September of 1958, did you see that invoice? A. Since September 1958 I have, yes.

Q. Well, could you state when you have seen it since that time? Well, to clarify the issue, are you speaking now of having seen it in the hands of the Government, sir? (258) A. Yes, sir.

Q. Well, prior to the time you saw it in the hands of the Government did you see it? A. I don't recall having seen this. I am very certain I did not, but you are going back five years and sometimes it is difficult to strain your memory on a small inconsequential invoice.

Q. Well, don't take umbrage at the next question, Mr. Cozza, but did you have anything to do with the destruction of this document? A. No, sir.

Q. Do you know anything about the destruction of this document of your personal knowledge? A. When you speak of destruction you mean the corner that is ripped?

Q. Yes. A. No.

Mr. Kiernan: No further questions.

The Court: Any cross examination?

Mr. Knachel: Any chance for a recess, Judge?

The Court: I had that idea myself. We will have a short recess here, members of the jury.

(Recess taken.)

(259) The Court: All right. Mr. Cozza, you may return to the stand.

The Witness: Your Honor, during recess I checked with respect to the 1958 minutes of Joint Council 41, and my notes disclose that I had previously submitted them in Washington, D. C., and I believe they have been identified for the record and are here.

Mr. Kiernan: Well, may I pursue this line?

The Court: Are they here?

Mr. Kiernan: Yes, they are introduced. I just wanted to make sure these were all the minutes of any type for that period of time.

The Witness: Yes, they are, sir.

The Court: That is all. They were here all the time that you were being asked about them?

The Witness: Yes, they were, I thought they were and I indicated that, but I wasn't sure I had stressed it.

Mr. Kiernan: May it please the Court, the purpose of the subpoena was to determine whether or not there were any (260) further minutes, and we are satisfied that there were not.

The Court: Any cross examination?

CROSS-EXAMINATION OF MICHAEL E. COZZA.

By Mr. Knachel:

Q. Mr. Cozza, I believe you indicated that you started your employment in 1955? A. Yes, sir.

Q. And at that time you inherited the records you found there, is that correct? A. Sir?

Q. You inherited the records that you found there before 1945? A. Yes, sir.

Q. Now outside of Joint Council 41 did your employment as lawyer and accountant cover any Locals? A. Yes, sir, quite a few.

Q. What were those Locals? A. The names of them, sir, or—

Q. Yes. I want to know the extent of your work. A. Well, represent about 15-20 other Locals.

Q. 15 or 20 other Locals of the Teamster organization? A. I'd say at least 15-18—about 15 or so Teamsters and a number of others than Teamster.

Mr. Kiernan: May it please the Court, (261) I believe that this goes beyond the scope of the direct examination. The direct examination was limited solely to the production of these records.

Mr. Knachel: I thought I had a right to show the nature of his employment.

The Court: Yes, you can ask him what the nature of his employment was. He may have something else, too. You may answer. If it isn't important, let's not waste time on it.

Q. And on all of these Locals you handled the problems existing between those Locals and Internal Revenue, is that correct? A. Yes, sir.

Q. And from time to time you discussed the financial status of these Locals with men from the Internal Revenue? A. Yes, sir.

Q. And in connection with your employment did you discuss with Internal Revenue the financial status of Joint Council 41? A. Yes, sir.

Mr. Kiernan: May it please the Court, I don't know what any discussion Mr. Cozza (262) would have with Internal Revenue, what that has to do with production of books and records here in court.

The Court: Well, I don't know. We will see. You claim it does have a bearing?

Q. Well, in connection with that work, were the records of 1955 cleared with Internal Revenue? A. By cleared do you mean were they approved?

Q. Yes. A. Yes, they were approved by the Internal Revenue Service.

Q. How far up to date are you with Internal Revenue? A. Well, I believe up through the year 1957 has been approved.

Q. Now in connection with that work, you also had subpoenas issued by the McClellan Committee, is that correct? A. Yes, sir.

Q. And were there times when you were not able to present these records to Internal Revenue because they were in the hands of the McClellan Committee? A. Yes, various times.

Q. I hand you—

(Article marked for the purposes of identification as Defendant's Exhibit B.)

Mr. Kiernan: Again, may it please (263) the Court, I see no relationship at all between this line of testimony and the direct testimony of the witness.

The Court: Well, he said, "I hand you," and I don't know what it is, so I can't rule on it until I find out what it is. You claim that it is pertinent?

Mr. Knachel: Well, I want to show that he was switched back and forth between the two.

The Court: Well, to explain the difficulty in getting them?

Mr. Knachel: Yes.

Mr. Kiernan: May it please the Court—

The Court: I know, but there was an inference that perhaps he hadn't furnished all the papers called for by the subpoena, and I think it is only reasonable to show that he was furnishing them to several different bodies, tax collector and committee of Congress and this Court, if that is the purpose of it.

Mr. Knachel: That is the purpose.

Q. I hand you what has been marked Defendant's Exhibit B (264) and ask you what those are?

Mr. Kiernan: May the Government examine them, please?

Mr. Knachel: I forgot to show them to you. Excuse me. I don't want to get in trouble.

Q. Will you tell the jury and the Court what those are? A. Exhibit B dated February 2, 1959, is a receipt written by Mr. Paul T. Riebesell, Auditor of United States Select Committee on Improper Activities in the Labor Management Field, wherein he returns numerous documents of the Joint Council 41 which had been previously submitted by me to the Senate Select Committee.

Q. Well, are these things contained in Exhibit B generally receipts that you got for records which you gave to the Select Committee? A. Yes, sir.

Q. And then other receipts when they were returned, is that correct? A. Yes.

Q. Now are there records of the Joint Council which are not presently available to you? A. No, sir.

Q. Well— A. Except these, yes.

(265) Q. And how long have these records been unavailable to you? A. You mean during the past five years? Very frequently they have been available, they haven't been available, they have. It seemed like I was constantly getting called from one Government agency or Congressional committee or Grand Jury, or somebody else wanted it.

Mr. Kiernan: May it please the Court, if this line of inquiry continues the Government is going to insist on going into the question of why these inquiries were made.

The Court: Yes. Let's not open the field too wide.

(Article marked for the purposes of identification as Defendant's Exhibit C.)

Q. I hand you Defendant's Exhibit C and ask you to examine that and tell us what that is. A. Defendant's Exhibit C is a subpoena from the Grand Jury, United States District Court for the District of Columbia, served on any appropriate official of Joint Council 41 which calls for the submission of various records of the Joint Council 41.

Q. In response to that subpoena did you attend the hearings of the Grand Jury in Washington, D. C.? A. Yes. The subpoena, incidentally, is dated October 27, (266) 1959 and I responded to that subpoena.

Q. And you appeared before the Grand Jury in this case? A. In the very exact nature of this case, yes, sir.

(267) Q. In the field office of the Select Committee, I believe it has been established that there was a Miss Thorp and a Mr. Riebesell? A. Yes, Mrs. Thorp and Mr. Riebesell.

Q. During the period of time up through September, 1958, did you have an arrangement with them whereby, when they asked for records you would give them to them and get receipts from them, and they would get receipts when they were returned? A. Yes, sir. Whenever they wanted anything they would ask, and they almost immediately secured whatever they wanted, and they receipted for them, and so forth.

Mr. Knachel: I think that's all, your Honor.

Re-Direct Examination of Michael E. Cozza.

By Mr. Kiernan:

Q. Now, Mr. Cozza, you made reference to a subpoena to which you say you responded before the Grand Jury in Washington, D. C., is that correct, sir? A. Yes, sir.

Q. And the records that you brought before the Grand Jury in Washington, D. C. are the very records which are here before the Court in this case today, is that not correct, sir? (268) A. Yes, sir.

Q. And the day you produced those records for the Grand Jury in Cleveland, did you make some reference to the fact that you might like to have the records back for the benefit of your client, that they might become necessary? Is that correct, sir? A. During the course of the hearing in the Grand Jury, you mean?

Q. During the time you were in the Grand Jury here in Cleveland, did you raise an issue as to the availability of the records? A. I raised a question—

Q. Would you answer the question, please, yes or no?

The Court. No, give him a chance to answer, Mr. Kiernan. Go ahead, Mr. Cozza.

A. I asked if the records might be available from time to time, if we had need for them, and I asked also at the time if, when you were through with the records, you would return them to me instead of giving them to some other branch of the Government, as had been done on previous occasions—

Mr. Kiernan: Your Honor, would you please direct the witness to answer the question?

The Court: He is answering you.

Mr. Knachel: Let him answer.

(269) Mr. Kiernan: Your Honor, the Government is—

The Court: Let's not get involved in trivial matters. What is it you want to know? Ask the question and get the answer.

Q. At that time, Mr. Cozza, did I not tell you that anytime that you or your client had any need for any of the records which were in our possession, that you might feel free to ask for them and that we would make sure that they would be made available for your use? A. Yes, sir.

Q. And have you ever asked for those records when they were not made available by me? A. I think we did have some need for the records. I don't recall of ever asking you for them. I don't think I did. I am quite certain I never asked you for them, although we did have some need for them.

Q. The question was, Mr. Cozza, whether you ever asked and were ever refused? A. I never was refused, I do know that.

Q. Mr. Cozza, you made reference to the fact that the records of the Joint Council 41 for the year 1955 were examined by the Internal Revenue and approved, **(270)** is that not correct, sir? A. Yes, sir.

Q. Mr. Cozza, you are a CPA and an attorney, is that correct? A. Yes, sir.

Q. And you were an employee of the Internal Revenue Service for approximately 13 years? A. Yes, sir.

Q. And your primary responsibility to your client is that of a tax expert, is that not correct? A. No, sir.

Q. Well, you do advise them on tax problems, do you not? A. Among other things, yes, sir.

Q. You fill out their tax returns? A. Yes, sir.

Q. Have you not testified in the past that you advised them on tax matters? A. Yes, sir.

Q. Would you qualify yourself as well-informed as to the tax laws, sir? A. You are asking me to express an opinion of what I think of myself, sir—

> The Court: What is the purpose of this? What is the point?
>
> Mr. Kiernan: I will withdraw the **(271)** question, your Honor.

Q. Mr. Cozza, going back to your statement that these records were approved by the Internal Revenue, sir, would you state whether or not a union is a tax-free organization, or may qualify as a tax-free organization? A. Sir, the best way I can answer that question—

Q. Would you answer the question yes or no, please?

> The Court: Without objection, I don't understand what the point of this is. What are you trying to prove on redirect examination?

Mr. Kiernan: Your Honor, I want to show exactly what is meant by the statement that the records were approved by the Internal Revenue Service.

The Court: What has that to do with our case?

Mr. Knachel: Nothing, your Honor.

Mr. Kiernan: That was exactly my objection before, your Honor. I don't know why they opened it up on cross-examination.

The Court: It is an irrelevant matter, and let's not bother spending time with it.

(272) Mr. Kiernan: I think it is important because the case involves a transaction in 1955, the original transaction.

The Court: There is no income tax question arising out of this transaction.

Mr. Knachel: We bought something and we paid for it. There is no question about that.

The Court: We are wandering far afield, I am afraid.

Mr. Kiernan: May it please the Court, I can't have any idea—

The Court: No, this is an irrelevant question. The mere fact that he might ask an irrelevant question doesn't require you to go into the whole problem on redirect examination.

Mr. Kiernan: The Government is perfectly willing to stipulate that that is irrelevant.

The Court: Income tax, members of the jury, has nothing whatever to do with this question before us.

Mr. Kiernan: And would the Court also, please, instruct the jury that whatever type of approval there was by the Internal (273) Revenue Service has nothing to do with the case?

The Court: I'm sure I cannot be bound by Mr. Cozza's statement that the income tax agency approved it, and the jury has no concern with it at all.

Mr. Kiernan: No further questions.

The Court: There is no controversy about it whatever. Call your next witness. You are excused, Mr. Cozza.

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(274)

Thereupon the Government called at a witness Aida Passalaqua who, being first duly sworn, was examined and testified as follows:

Direct Examination of Aida Passalaqua.

By Mr. Kiernan:

Q. Mrs. Passalaqua, would you please state your full name and business or occupation? A. Aida Passalaqua; secretary for William Presser, Teamsters Joint Council No. 41.

The Court: Will you spell your name, please?
The Witness: A-i-d-a P-a-s-s-a-l-a-q-u-a.
The Court: It is Mrs. or Miss?
The Witness: Mrs.

Q. Mrs. Passalaqua, were you subpoenaed back in March to appear before the Grand Jury here in Cleveland? A. Yes.

Q. And at that time did you file a motion to quash that subpoena? A. I didn't, no.

Q. Well, was a motion to quash the subpoena filed on your behalf?

(275) Mr. Knachel: I object, your Honor.
The Court: What is the purpose of this?
Mr. Kiernan: Your Honor, I want to lay the groundwork for possibly having to cross-examine this witness as hostile.
Mr. Knachel: Well, go ahead and examine her.
Mr. Kiernan: No, I insist on going in my way.
The Court: Well, go ahead.

Q. Did you file a motion to quash that subpoena, Mrs. Passalaqua?

The Court: She said she didn't.

A. I didn't, sir, no.

Q. Now, do you deny you appeared here in this court room?

> The Court: Oh, no, she doesn't say one wasn't filed. It was filed for her, yes. She didn't personally do it. That's what I think she means.

Q. Was one filed in your behalf? A. I believe there was, sir. I don't know for sure.

Q. There was a subpoena issued to you, Mrs. Passalaqua, and you didn't know that a motion was filed to quash that subpoena? (276) A. As I said, there might have been, sir. I don't know for sure.

Q. Did you personally go to any attorney and ask him to quash this subpoena? A. No, I didn't, sir.

Q. Do you know who the attorney was who quashed your subpoena, or who made the motion to quash it? A. If one was filed, it might have been Mr. Corrigan.

Q. That's the firm of Corrigan and Garmone, is that right? A. That's right.

Q. And at that time they represented the Defendant, William Presser? A. I believe so, sir.

Q. Now, in due course that motion came on for hearing in this Court before Judge Jones, did it not, Mrs. Passalaqua? A. Yes, sir.

> Mr. Knachel: Your Honor, may I have an objection to all this?
>
> The Court: What is the point of it? It's a matter of record.
>
> Mr. Kiernan: Your Honor, I want to show for the record again that I believe this witness has shown an air of hostility toward the Government, (277) and I believe it is proper—
>
> Mr. Knachel: Well, he is trying to show that without even asking her a question about the fact.
>
> The Court: Yes, the record shows what happened. What happened to the motion? State it right out.
>
> Mr. Kiernan: The motion was denied.

Q. Is that not right, Mrs. Passalaqua? A. That I don't know, sir.

Q. Well, you were directed by Judge Jones to go before the Grand Jury, were you not? A. By Judge Jones to go before the Grand Jury?

Q. That's right. A. If the subpoena says so, I did.

Q. Well, you did eventually appear before the Grand Jury right here in this building? A. Yes, I did.

Q. When you appeared before that Grand Jury on March 17, 1960, did you testify? A. No, sir.

Q. Did you state why you would not testify? A. Yes, sir.

Q. Do you recall what that reason was that you gave? A. That I had already given the testimony in Washington (278) three different times.

Q. Did you say anything else? A. Not that I recall, sir.

Q. Well, didn't you indicate that the Grand Jury here could avail themselves of that Washington testimony? A. I said you had my Washington testimony. I was sure you had it.

Q. And that the Grand Jury could use that? A. I didn't say that the Grand Jury could use it. I said you had it.

Q. Well, certainly, then, that I could use it, is that not right? A. I didn't say that you could use it.

Q. Well, did you state that you had testified, and then make reference to the fact that I had it?

Mr. Knachel: I object to this argument.

The Court: Yes, it is argument.

Q. The fact of the matter is, Mrs. Passalaqua, you did not testify? A. That's right.

Q. But you say you did testify previously in Washington, D. C.? A. I did, yes.

Q. Do you recall whether or not you testified under oath (279) in Washington, D. C.? A. Yes, I did.

Q. Was the testimony you gave there true and correct to the best of your recollection, knowledge and belief? A. To the best of my recollection, it was the truth.

Q. And, in effect, you were telling the Grand Jury here in Cleveland that they might use your Washington testimony if they saw fit?

Mr. Knachel: I object.

The Court: She said she didn't.

Q. And that they might rely on that testimony as being true?

Mr. Knachel: I object.

A. I didn't say anything—

The Court: All she said was that they had it.

Q. And you also testified that that testimony was true, did you not, Mrs. Passalaqua? A. Yes, I did.

(280) Q. Now, Mrs. Passalaqua, since the date that the indictment in this case was returned, did I attempt to contact you by phone and ask you—strike that, please.

Were you served with a subpoena to appear here today and testify? A. I didn't get your question, sir.

Q. In the recent past were you served with a subpoena to come to court and testify in this case? A. Yes.

Q. And subsequent to the time that you received that subpoena did I call you on the phone and request an appointment to meet you, that you come into the office so that we could discuss your possible testimony? A. Yes, sir.

Q. And you refused to come in, did you not, Mrs. Passalaqua? A. Yes, sir.

Q. And were efforts made by the FBI to interview you? A. Pardon?

Q. Were efforts made by an agent of the Federal Bureau of Investigation to interview you? A. Yes, sir.

Q. And did you not refuse to submit to an interview with that agent?

Mr. Knachel: Your Honor, I object to this.

(281) The Court: She may answer.

Mr. Knachel: Her subpoena was to come into court.

The Court: She is being asked if he didn't try to get her voluntarily.

The Witness: He did ask. Now he is asking about the FBI.

The Court: Did they contact you?

The Witness: Yes, they did.

Q. And did you agree to give them a statement? A. No, sir.

Q. You refused to give them a statement? A. I told them that anything I had to say I would say on the witness stand.

Q. So as of right now, apart from whatever reference I made to the testimony in Washington, you never told me anything or talked to me about anything I wanted to know about this case? A. That's right.

Q. And I told you as Prosecuting Attorney it would be necessary and desirable that I would have this opportunity to talk to you, did I not?

Mr. Knachel: I object to the speech. That is rather self-serving.

The Court: What is this?

(282) I don't get this line of questioning.

Mr. Kiernan: Strike that last question.

Q. Now, Mrs. Passalaqua, you say you have been a secretary for Joint Council 41 working under the direction of Mr. Presser, is that correct? A. Yes, sir.

Q. How long have you been secretary for Joint Council 41? A. 19½ years.

Q. And approximately how long have you been working under the direction of Mr. Presser? A. Since he became an officer in '53.

Q. Could you state whether or not your husband is also employed in some capacity with Joint Council 41? A. Yes.

Q. And his name is John Passalaqua, is that correct? A. That is right, sir.

Q. Could you roughly estimate what your joint salaries from Joint Council 41 would be on a weekly basis?

Mr. Knachel: I object, your Honor.

The Court: What is the materiality of that?

Mr. Kiernan: Withdraw the question, your Honor. It is obviously material to establish hostility or motive on the part of the witness for (283) the type of testimony we may receive.

Mr. Knachel: Well, there are thousands of people, man and wife, who work.

The Court: That is not unusual. I don't know whether it is right or not.

Q. Well now, can you state whether or not Mr. Presser was an officer of Joint Council 41— A. Sir, I can't understand you when you turn your back to me.

Q. Excuse me, I am very sorry. Would you state whether or not the defendant, Mr. Presser, is an officer of Joint Council 41? A. Yes, he is, sir.

Q. And does he have office space at Joint Council 41? A. Yes, he does.

Q. What type of office space does Joint Council 41 have? A. What do you mean by what type?

Q. Well, they do have office space, do they not? A. Yes.

Q. And they are located in the Teamsters Building? A. That's right.

Q. Could you describe the particular office space reserved for Joint Council 41?

Mr. Knachel: You mean at the time or now?

(284) Q. As of right now. A. Well, he has an office and I have an office, if that is what you want to know.

Q. And these are adjoining offices? A. That's right.

Q. With a door between? A. That's right.

Q. And the door is open? A. That's right.

Q. And to get into those offices to that suite it is necessary to knock on the door, is that not right, Mrs. Passalaqua? A. For anybody that doesn't have a key, yes.

Q. And that door is kept locked at all times? A. That's right.

Q. And the only way one can gain entrance is by knocking and either you or Mr. Presser would push a buzzer to open the door? A. Anybody in the office could push the buzzer.

Q. Did you not testify in Washington before that Grand Jury, and you now have told us that your testimony there was true, that there is a buzzer available to you and a buzzer available to Mr. Presser? A. I said there was a buzzer available to an officer of the Joint Council, whoever might be in the office to press **(285)** the buzzer.

Q. Who is in that office, Mrs. Passalaqua? A. There could be agents, could be officers—

Q. Are you going to deny now that the man who sits in this Office is the President, Mr. Presser.

Mr. Knachel: I object.

A. I didn't say that.

The Court: She didn't say that.

A. I didn't say he wasn't the President.

Q. Is he not the one who occupies that office? A. Yes, he does occupy that office.

Q. And he is your immediate superior? A. That's right.

Q. And it is from Mr. Presser that you take directions, is that not right? A. That's right.

Q. Now, Mrs. Passalaqua, in the course of your duties do you have occasion to have any contact with the files of Joint Council 41? A. Yes, I do.

Q. And would you state how those files are kept? A. What do you mean how they are kept?

Q. Physically in your office. A. Well, it is hard to explain now. It was two different offices. We have a new office. That has been remodeled.

(286) Q. Directing your attention to September of 1958. A. It was a metal cabinet behind my desk which was our file.

Q. And were there also files kept in Mr Presser's private office? A. In his own desk he kept whatever he had, personal files.

Q. But the files normally were kept in a metal cabinet behind your desk? A. That's right.

Q. Was that a lock-up cabinet? A. Yes.

Q. And you had the key to it? A. That's right.

Q. And if anyone wanted to receive any files did you obtain the— A. I can't get your question.

The Court: I can't hear what you say.

Q. If one wished to obtain any files from that cabinet, Mrs. Passalaqua, in the normal course of business would they go to you and ask for them? A. In the normal course, yes.

Q. And in the normal course of business does anyone other than yourself or Mr. Presser go to the files of Joint Council 41 and remove anything from them? A. They have authority to go there.

(287) Q. I said in the normal course of business, Mrs. Passalaqua, does anyone do it? A. That I can't answer. I said they have authority.

Q. Mrs. Passalaqua, were you asked that question before the Grand Jury in Washington? A. I was asked who had access to the files.

Q. Did you not testify that in the normal course of business anyone who wanted records from Joint Council 41 or from those file cabinets— A. That's right.

Q. —the physical possession of the records— A. That's right.

Q. —in the normal course of business they would ask you and you would get them? A. That's right.

Q. Except Mr. Presser who also occupied the same offices and who could, if he wanted, go there himself, is that not correct? A. That is right. He could go.

Q. But in the normal course he too would probably ask you? A. That's right.

Q. Now apart from the files, Mrs. Passalaqua, what are your duties with Joint Council 41? What is the nature of your job? A. I am a private secretary.

(288) Q. Well, exactly what does that entail? A. Well, what do you say? A private secretary is a private secretary. I do correspondence.

Q. There may be some here who may not be familiar with what a private secretary does. Would you generally go into it and tell us what your regular duties are? Maybe we could take it item by item. Do you have occasion to write letters? A. Yes.

Q. And at whose direction would you write those letters? A. Well, some letters I would write under Mr. Presser's permission and some he writes. He gives them to me and I take them down on the stenotype.

Q. Does he dictate them to you? A. Yes.

Q. Do you follow any course of procedure with respect to identification when you write a letter at Mr. Presser's direction? A. In what respect?

Q. Do you put your initials on it if you type it? A. Yes, I do.

Q. And if Mr. Presser dictates the letter to you do you put his initials on it? A. Yes. Yes.

Q. In the normal course you would type it, is that right? (289) A. That's right.

Q. Now approximately how long a period of time in the normal course, now, might pass between the time you would type a letter and mail it?

Mr. Knachel: I object. How could she ever answer that one?

The Court: Let me see if she can. Can you answer it, Mrs. Passalaqua?

The Witness: What was the question again?

Q. I am asking you about the normal course of business of Joint Council 41. In the normal course of business do the letters that you type on one day get mailed on that same day? A. Not particularly all letters. If Mr. Presser says they are important, to get it out right away, I get it out right away.

Q. Well, when you type the letter, would you leave it lying around for a few days before you would mail it? A. If he says it isn't important and it might not be a matter of importance at that particular date, it could be lying around.

Q. But in the normal course you would mail the letters the same day that they are typed? A. Yes.

(290) Q. And the exception would be an unimportant letter? A. Well, if I am doing bookkeeping or something, I would put the letters aside to finish my bookkeeping and then I would type the letters.

Q. Now with respect to bookkeeping, could you state what your duties are, Mrs. Passalaqua? What type of bookkeeping do you do? A. The regular type the Teamster Union uses.

Q. Could you more specifically describe it in layman's language so that the Court and jury can understand it? A. Well, I don't exactly know what you mean.

Q. Well, physically do you have occasion to fill out checks for Joint Council 41? A. Yes, I do.

Q. Is that part of your regular duties? A. Yes.

Q. Well, could you describe to the Court and jury the procedure normally followed in making out the checks of Joint Council 41? A. You make out a check.

Q. Well, certainly, Mrs. Passalaqua, you make out a check. Do you in the normal course of business do it on your own or does somebody tell you what checks to make out? A. I never do anything on my own, sir.

Q. You are instructed to make out checks? (291) A. That's right.

Q. From whom do you receive those instructions? A. The instructions of the Secretary to make out checks to pay bills or such, and make out the payroll.

Q. That would be the normal routine checks? A. That's right.

Q. Now on occasion are there checks that are not normal and routine? A. What about them?

Q. Do you then also receive the instructions from the Secretary? A. Secretary and the President.

Q. The Secretary and who, ma'am? A. The President.

Q. That is Mr. Presser? A. That's right.

Q. Now getting back to this ordinary business, exactly what do you mean by that? A. Such as towels and maybe office supplies and such. Is that what you mean?

Q. The regular routine expenses of the day-to-day business of the office? A. That's right.

Q. Possibly supplies that you would have to obtain in the line of paper or something of that type? **(292)** A. That's right.

Q. But now items which would not be of the regular routine, for example we will say champagne buckets, would you say in the normal course at whose directions would you make out those checks? A. I would be told to make out a check.

Q. By whom? A. By Mr. Presser.

Q. Now at the time you make out the checks do you also have some type of book in which you make an entry? A. Yes.

Q. And what do you call that book? A. The Day Book.

Q. And that would show the disbursements for the day? A. That's right.

Q. And there would be an entry showing the date, is that right? A. That's right.

Q. And the check number? A. That's right.

Q. And the amount of money involved? A. That's right.

Q. And the party to whom the check was going to be made payable? A. That's right.

(293) Q. And possibly the purpose of the check? A. Whatever it is, yes.

Q. Do you also have occasion to fill in check stubs? A. Yes.

Q. And the information on the check stub would be substantially the same as that which you put in the Day Book, is that correct? A. That's right.

Q. Now in a day-to-day basis how do you go about this? Do you make up checks in advance? A. What do you mean make up checks in advance?

Q. Well, you make an entry, we will say, dated May 31, 1960. A. Yes.

Q. Would that entry normally be made on May 31, 1960? A. No.

Q. When would it normally be made? A. At the time of balancing the books at the end of the month, or if I have some extra time it will get done as soon as possible. It is available for our auditor by the end of the month.

Q. Do I understand your testimony that the entry in the Day Book is not made simultaneously as the entry in the check book? A. That's right.

Q. And the Day Book entry might be made some time later when (294) you would be balancing the books? A. That's right.

Q. Now with reference to the check book and the check stubs, how do you make them out? A. You just asked me.

Q. The check book, Mrs. Passalaqua, not the Day Book, with respect to time, A. I don't get what you mean.

Q. Well, more specifically, today is the 1st of June, I believe.

The Court: The 2nd.

Q. The 2nd of June. If you were making out a check dated the 2nd of June, would you make it out today? A. If I was told to make that check out today, I would make it out today.

Q. If you were told to make out a check today, what date would you put on it? A. June the 2nd.

Q. Now, the checks of Joint Council 41 are signed, are they not, Mrs. Passalaqua? A. Yes, sir.

Q. And do they require two signatures in order to be cashed? A. Yes, they do.

Q. And whose signature do they require? A. William Presser and Charles Cimino.

(295) Q. And could you state whether or not in the normal course either one or both of these parties signed the checks in blank? A. I might have several checks signed by one of them, then the other one signs it when they see it.

Q. Now in the normal course of business which one would you have the check signed in blank? A. Well, if Mr. Presser is out of town and I do expect him in, Mr. Cimino will sign blank checks for me.

Q. Mr. Cimino is not in your office, is he? A. No, sir.

Q. He is in another office on the same floor or on a different floor? A. No, sir, the second floor.

Q. On the second floor of the building? A. That's right.

Q. Now as a matter of day-to-day transactions, every time you make out a check you don't run up to the second floor to have him sign it, do you? A. Not every day, no.

Q. Or you wouldn't except him to come down every day every time you make out a check and sign that, would you? A. No, sir.

Q. And that practice is not followed, is it? A. No. Well, we have changed it now.

(296) Q. Well, directing your attention to before the change—when did this change come in? A. The new law, since the new law we have changed.

Q. Pardon me? A. With the new law we have changed our bookkeeping system.

Mr. Knachel: The new law, the Landrum-Griffin law.

Q. Prior to this new law which we will say started approximately the first of the year— A. September 1959.

Q. Prior to September of 1959, the normal procedure followed then was that Mr. Cimino would sign the checks in advance and you would have them available, the book and the blank checks available in the office, and you would make them out as possibly needed for routine expenses, or if something unusual was coming up Mr. Presser would tell you to fill out the check? A. That's right.

Q. And at the time you would fill it out, then he would sign it? A. Or vice versa. Mr. Presser could sign and then Mr. Cimino could sign later.

Q. Well, the normal course. A. Yes, that's right.

Q. Mr. Cimino would be the one who would sign it first, is **(297)** that not correct? A. No, not the normal course. I said either one could.

Q. Well, do they take turns? A. No, they don't. Whoever is there will sign them. Now I have checks today with no signatures on them.

Q. Excuse me? A. I said I have checks today with no signatures on them.

Q. You made out checks today— A. I didn't make out checks. I said I have the checks with no signatures.

Q. What type of checks are those? A. What do you mean by what type?

Q. Well, are the usual expenses, the routine matters or are these unusual? A. I don't have any checks made out. I said I have blank checks with no signature as compared to having one man sign a blank check and having it in the office.

Q. Excuse me. I misunderstood your testimony. What you are saying, then, as I understand it now, is that you have a blank check book with no signatures or nothing in it? A. That's right.

Q. Well, in the normal course, Mrs. Passalaqua, if a check is dated today the transaction is completed today, is that not correct? (298) A. Not necessarily, no.

Q. I am asking you in the normal course. A. In the normal course, yes.

Q. Now returning to the physical setup of your office, Mrs. Passalaqua, could you give the jury and the Court the benefit of a description? This would again be directing your attention to September 1958. A. What do you mean? I don't get your question.

Q. Well, the offices. I understand you to say—

The Court: Do you want to know what furniture is in it?

The Witness: I don't get what he means.

Q. I will be more specific. There are two rooms you have testified. There is a door between them and there is a locked door entering the suite.

The Court: Yes, we have been through that.

Q. Mr. Presser is in one office and you are in the other? A. That's right.

Q. Is there any entrance to Mr. Presser's office from the other side? A. Yes.

Q. Could you tell who sits in that other office or what type of entrance that is? (299) A. All our offices are joined from one office to the other.

Q. And whether or not those doors are kept locked? A. No, they are not.

Q. They are kept open at all times? A. They are unlocked.

Q. And they always have been? A. They always have been, yes.

Q. And you never testified any differently? A. Not that they have been locked, no. I don't know that they are locked at all. I can always go from one to the other.

Q. It is common practice for people to run back and forth between those offices? A. To my knowledge—

Q. Mrs. Passalaqua, as a common practice do people use that as a corridor? A. They come into that, they use the wash room, I couldn't tell you how many people come in that office. I am in my own office.

Q. What people? A. Anybody that might be in the adjoining office.

Q. Anybody who might be in the building can whip through all the offices? A. No, they can't whip through all the offices. Whoever might be in another office might come through there.

(300) Q. If they had some business, is that correct? A. I imagine they would have to have business to be in an office.

Q. Now, Mrs. Passalaqua, how well do you know the defendant, Mr. Presser? A. I didn't know Mr. Presser before he came to work for the Teamsters.

Q. Do you know where he lives now? A. Yes, I do.

Q. Could you state what his home address is? A. I mean—I believe it is 2525—I have no occasion to know his address.

Q. To the best of your knowledge would you state what it is? A. I believe it is 2525 Claybourne.

Q. Does he have a telephone at home? A. Yes, he does.

Q. Do you know what that number is? A. I believe it is Evergreen 1-1515.

Q. Do you ever have occasion to call him at home? A. Yes, I do have.

Q. And you use that phone and that phone number, is that correct? A. Yes, I do.

The Court: Well, I think we will have to suspend here, members of (301) the jury. We will adjourn until 2 o'clock this afternoon.

You will continue, of course, to bear in mind the instructions given you at other adjournment periods not to discuss the case among yourselves nor with anyone else, permit no one to talk with you about it or any phase of it, and avoid forming or expressing any opinion respecting the merits of the case or any phase of it, or as to the guilt or innocence of the defendant until it is submitted to you for your consideration.

Keep your own counsel. Return at 2 o'clock this afternoon.

(Thereupon court adjourned until 2 o'clock p. m., June 2, 1960.)

(302) Thursday, June 2, 1960, 2:00 o'clock, P. M.

The Court: Proceed with the examination of the witness.

DIRECT EXAMINATION OF AIDA PASSALAQUA (Resumed).

By Mr. Kiernan:

Q. Mrs. Passalaqua, in addition to yourself, does the Joint Council 41 have occasion to employ anyone, any other help, of a secretarial nature? A. Yes.

Q. Is that on a permanent or part-time basis? A. Part-time.

Q. I am directing your attention to September, 1958, was that the same situation existing then? A. Since I have been working there it has been the same.

Q. Is there any particular person that you normally would hire to help out on a part-time basis? A. I have had several different girls in.

Q. Do you have anyone that you would normally have in? A. We have had one that worked—that we had retained on a weekly pay for about two years or a year and a half.

Q. I see. Now, directing your attention to the month of September of 1958, do you recall whether or not you (303) had occasion to employ any part-time help? A. No, I don't recall, sir.

Q. Well, would the records of Joint Council 41 indicate whether or not you had? A. It would, yes, I imagine so.

Q. And would there be a payroll check of some small type? A. Why, they would indicate that we retained this one young lady, and we would pay her each week whether she worked or not. We were free to call her.

Q. And that young lady is Ann Maddeo, is that correct? A. That's right.

Q. For the record, Miss Maddeo is the secretary of another Local in the same building, is that not right, ma'am? A. That's right.

Q. And the type of work she normally would do for you would have to do with sending out notices, or folders, and that type of thing? A. That's right.

Q. And in the normal course she would perform that work in her own office, is that not right? A. That's right.

Q. Directing your attention to September, 1958, do you recall whether, in fact, Miss Maddeo was employed during that period of time, during any of that period? A. I believe she was on our payroll during that time, (304) but I couldn't say positively if she did any work for us during that time.

Q. In the normal course of events when Miss Maddeo does perform some work, does she come to you for instructions as to how you want her to perform, or what work you want her to get out? A. Either she comes to the office or, if I'm not busy, I will bring it to her office.

Q. But in either event she would obtain instructions from you? A. That's right.

Q. As to what to do? A. That's right.

Q. And she would not have occasion to go to your office, or go through your files without your permission being granted to her? A. To my knowledge, she has never.

Q. Do you recall, Mrs. Passalaqua, whether anyone else would have been hired during the month of September, 1958? A. No, that I wouldn't, sir.

Q. But if you made reference to the record— A. Then I could tell you.

Q. —then you could tell me? A. Yes.

(305) Q. Now, Mrs. Passalaqua, in the event you take time off, does someone else fill in for you, or take your place? A. Yes.

Q. And normally that would be during your vacation period, is that correct? A. That's right.

Q. Directing your attention to the year 1958, could you state whether or not you had a vacation yourself that year? A. No, I didn't have a vacation in 1958.

Q. Directing your attention again, Mrs. Passalaqua, to the month of September, 1958, do you recall the offices of Joint Council 41 being visited by a Walter Sheridan? A. Yes, sir.

Q. Do you specifically recall how he came to be there? A. No, I don't know how he came to be there.

Q. Could you generally recall what time of day it was that he came? A. I believe he came in the morning.

Q. And when he came to the office you were there, and who else, ma'am? A. I believe I was there, but I know that I saw Mr. Sheridan in our office on that morning.

Q. Was Mr. Presser there at that time? (306) A. At that particular time, if he wasn't there he came in shortly after.

Q. Well, would it be fair to assume that either you or Mr. Presser would have to be there for Mr. Sheridan to get in? A. Yes.

Q. Do you recall having any conversation at that time with the Defendant, Mr. Presser, with respect to making files available to Mr. Sheridan? A. Well, it is our procedure to have our CPA hand out records and such, and we couldn't reach our auditor, and Mr. Sheridan was quite put out and became a little bit—oh, I wouldn't say hostile, but he was a little bit loud, that he must get into the files, so rather than get into an argument Mr. Presser said to make the files available.

Q. Did Mr. Presser use any hostile language? A. Mr. Presser? No.

Q. Did he react in any way to Mr. Sheridan's hostile attitude, as you have testified? A. All Mr. Presser said to me was to see if we can get hold of Cozza to get the records from him.

Q. And you were not able to get him, is that right? A. We were not able to reach him.

(307) Q. Did Mr. Presser indicate a reluctance to produce the files for Mr. Sheridan? A. No, he didn't.

Q. He expressed his willingness to cooperate, is that right? A. That's right.

Q. And he told you that you should make certain files available for Mr. Sheridan? A. That's right.

Q. Again going back to that time, could you describe for the jury the physical arrangement that existed, where it was that Mr. Sheridan stood or sat when he was going through the files, where you were and where Mr. Presser was? A. Mr. Presser was in his office and I was at my desk, and the files were behind my desk, that is, to my back.

Q. Could you see Mr. Sheridan going through the files? A. Well, I was at an angle and I could, just by tilting my head, see Mr. Sheridan.

Q. In other words, if you were sitting this way (indicating) the files would be here, and he would be— A. The files were behind me, and Mr. Sheridan was working about there (indicating).

Q. His back was toward you, is that correct? A. Yes.

Q. So that he could not necessarily observe you without **(308)** turning around? A. That's right.

Q. But you could observe him? A. He could observe me in the same manner I could observe him. By just tilting a little we could see each other.

Q. During the course of Mr. Sheridan's examination of these records, do you recall whether he was standing, sitting, or what type of arrangement he had made available to him there? A. I do recall when he started, our files were low, and he had to stoop to get them, and Mr. Presser then indicated that since he was going to stay we would make him comfortable, and we furnished him with a chair, and I believe it was my typewriter stand that he worked off of.

Q. That would be one of these fairly low wooden typewriter stands? A. That's right.

Q. Approximately 15, 16 inches wide? A. With the leaves opened, a little more.

Q. Maybe a yard long? A. Yes.

Q. And he was sitting up at the table reviewing the files? A. That's right.

(309) Q. Now, did you later, during the course of time Mr. Sheridan was checking these files, notice whether or not he was taking any notes? A. I had only noticed on one occasion, where he did do something, and I couldn't tell exactly what he was doing, but he adjusted his coat, and he sort of glanced back to see if I was looking, and that indicated—

Q. And were you looking at him? A. Pardon?

Q. Were you looking at him? A. I was sitting sideways, and in going through my desk I did see that particular motion of his.

(310) Q. And there was something about this motion which caught your attention, is that correct? A. That's right.

Q. And did you do anything when you noticed Mr. Sheridan perform this motion? A. Yes. I motioned to Mr. Presser to come into the office.

Q. And then we will assume that from where your desk is you have a clear and unobstructed view of Mr. Presser at his desk? A. That's right.

Q. And you motioned for him in a manner such as crooking your finger? A. That's right.

Q. And he came into the office? A. That's right.

Q. Do you recall whether or not you had any conversation with Mr. Presser when he came into the office? A. No, I didn't.

Q. Do you remember what Mr. Presser did when he came into the office? A. No, I resumed my work. I was working, I believe, on books and they spoke and I paid no attention at that particular time to what they were saying.

Q. But you do recall that there was some conversation between—(311) A. They were talking.

Q. Between Mr. Presser and Mr. Sheridan? A. That's right.

Q. Do you recall approximately how long this conversation would have lasted? A. No, I don't.

Q. Now eventually Mr. Sheridan completed the job he was performing in the office, is that not correct, and started to leave? A. I presume he did, yes.

Q. And do you recall what happened at the time Mr. Sheridan was leaving? A. I wasn't there when he left.

Q. Well, to refresh your recollection do you recall testifying before the Grand Jury in Washington, D. C. that when Mr. Sheridan went to leave he started to take some files with him? A. Yes, I do remember testifying to that. And as much as I can remember, I had probably left to go to the closet either to pick up a sweater or something while the air-conditioning was going on, and coming back I did hear the conversation to which you have been referring to.

Q. And did you testify in Washington before the Grand Jury that you heard this part of the conversation, Mr. Presser saying, "You are not taking any papers unless I have them (312) photostated first"? A. I remember Mr. Presser, this is the only time I think I ever heard Mr. Presser get a little bit mad, and he said, "You are not taking"—and he swore—"papers out of here until I have them photostated."

Q. And did you testify in Washington that Mr. Sheridan said, "Fine, I will be back." A. I don't—I remember something like that. He said all right or fine or something like that.

Q. Well, some statement— A. Remarked that it was all right.

Q. Statement of that general type? A. Yes.

Q. Now at that time or up to that time we assume that Mr. Sheridan had these records in his hand, is that correct? A. I imagine so.

Q. And did you testify in Washington that after this conversation he handed the records over to Mr. Presser? A. I assume he handed them over to Mr. Presser.

Q. And that Mr. Presser brought them into his office and put them on top of a television set? A. Well, I was told the next morning that the papers were on the television set.

Q. Well, to refresh your recollection, Mrs. Passalaqua, did (313) you tell the Grand Jury in Washington that you saw them being placed on the television set at that time? A. I don't recall that I told them I saw them being placed. I knew they were on the television set the next morning.

Q. And that television set was in Mr. Presser's office? A. That's right.

Q. At the time Mr. Sheridan left was there anyone there but you and Mr. Presser? A. Pardon?

Q. At the time Mr. Sheridan was leaving was there anyone else in the office besides— A. I wasn't there when Mr. Sheridan left.

Q. At the time this conversation took place having to do with the records and photostating and so on and so forth? A. I left immediately after I heard that portion.

Q. Was there anyone else in the office? A. Not that I recall. There might have been, but I don't recall that there was.

Q. Now you say that the next day you saw these records placed on top— A. I didn't say I saw them placed there. I saw them on it.

Q. Strike the question, please. You saw them resting on top of the television cabinet? A. I saw them on the television, yes.

Q. And that television cabinet is in Mr. Presser's office? (314) That's right.

Q. Now could you say whether or not they remained on that television cabinet for several days? A. I couldn't tell you if they remained there or not, but I saw them there that day and probably another time, but I paid no attention to them.

Q. In the meantime you did not perform any function with respect to those records? A. No, sir.

Q. You did not have occasion to review them? A. No, sir.

Q. Or photostat them? A. No, sir.

Q. As far as you knew whoever placed the records on the cabinet placed them there with a purpose, you were not going to take them unless somebody instructed you to take them and put them some place else? A. That's right.

Q. And you did not do anything at all to those records? A. I did not, sir.

Q. Now, Mrs. Passalaqua, I will direct your attention to what has been marked Government's Exhibit 12 for purposes of identification and ask if you have seen that document before? I am making reference to occasions other than before the Grand Jury in Washington, D. C. (315) A. I presume probably I did, if it was paid out of our office.

Q. You presume you did? A. In 1955, that is five years ago.

Q. You have no recollection of having seen it? A. I probably did.

Q. You probably did in the normal course of your business? A. Yes.

Q. Now do you recall seeing a torn invoice among your records? A. I don't recall at all whether it was torn or whether it was in one piece.

Q. Do you recall testifying in Washington, D. C. as to whether or not you had seen a torn invoice in the records? A. No, I don't recall testifying that I saw a torn invoice.

Q. Would it be the normal thing to see a torn invoice in the records? A. Yes. I have paid many bills that were torn, that were torn off a package or something.

Q. So your attention would not necessarily be called to it one way or the other? A. No.

Q. Mrs. Passalaqua, directing your attention again to September 1958, did you tear this invoice? A. No, sir.

(316) Q. Did you perform any alteration on the invoice? A. I might have.

Q. Did you make an erasure? A. No, sir.

Q. Well, when you say you might have in 1958 performed some alteration, what alteration would you mean? A. I didn't indicate that I made an alteration.

Q. Excuse me. I will ask the question again. Did you make any alteration on this document? A. No, I didn't make any alteration. No.

Q. Now, Mrs. Passalaqua, there are various employees on the payroll of Joint Council 41, is that not correct? A. That's right.

Q. And these employees would be the business agents? A. That's right.

Q. And yourself? A. That's right.

Q. And Mr. Presser? A. That's right.

Q. And there are other officers of the organization? A. On the payroll?

Q. Well, there are no officers on the payroll except Mr. Presser, is that correct? A. That's right.

Q. But there are other officers in the corporation? (317) A. That's right.

Q. Or in the organization? A. That's right.

Q. Now from time to time did these men have occasions to have meetings in Mr. Presser's office? A. Well, yes, surely.

Q. And when such meetings are held, minutes are made, are they not? A. Yes. The Board meetings are held there.

Q. So that if any Board meeting had been held in Mr. Presser's office during the month of September, 1958, the minutes should show it? A. That's right.

Mr. Kiernan: Would the Court indulge me a moment, please?

(Conference between Government counsel.)

Q. Mrs. Passalaqua, for the record, please, would you give the Court and jury the address of Joint Council 41? A. 2070 East 22nd Street.

Q. Cleveland, Ohio? A. Cleveland 15.

Q. And the telephone number? A. Cherry 1-7053.

Q. Now, Mrs. Passalaqua, I will hand you what has been marked Government's Exhibit 23 for purposes of (318) identification. This appears to be the cash disbursement book of Joint Council 41 for the year 1955. I will direct your attention to the date December 29, Line 7. A. Yes.

Q. And ask you if you would read the entry made there? A. R. Deutsch, $824.

Q. And is there any reference to a check number? A. 82-8302.

Q. Would this entry have been made by you, Mrs. Passalaqua? A. Pardon?

Q. Would this entry have been made by you? A. I assume it was, yes.

Q. And the entry would signify that Rudolph Deutsch has been paid $824 by Joint Council 41 under a check, the number of which you just gave us, is that correct? A. That's right.

Q. Now I will direct your attention to the date December 12, Line 26.

The Court: What date is that? What year?

Mr. Kiernan: 1955, your Honor.

A. Yes.

Q. Would you read the entry that appears on that line, please? (319) A. Cash for $25.

Q. Would you continue, please? Is there an indication of what the $25 cash was for? A. Shipping expense on gifts.

Q. Shipping expense on gifts? A. That's right.

Q. And the date of that entry is December 12, is that correct? A. That's right.

Q. Now I will direct your attention to the dates December 20, 21, 22 and 23, and ask you generally whether or not several entries appearing on those pages indicate that there were expenditures for Christmas gifts? A. Yes.

Q. Now if you were to count them, Mrs. Passalaqua, would you say that there would be approximately 44 such entries? A. 21st, 22nd—

Q. 20th, 21st, 22nd and 23rd. Your rough estimate would be sufficient, Mrs. Passalaqua. A. Well, the first two in the 21st aren't Christmas gifts. (Witness examining exhibit.) 35.

Q. Does that cover all the pages? Well, that is sufficient. A. To the 22nd. I am sorry, it goes a little farther because you had a payroll in here.

Q. Well, if you feel your answer was reasonably accurate, **(320)** I think it is sufficient. A. Yes.

Mr. Kiernan: May it please the Court, the Government now offers Government's Exhibit 22 in evidence.

Mr. Knachel: Obejct.

Mr. Kiernan: 23, rather.

The Court: All right.

Q. Mrs. Passalaqua, directing your attention to what has been marked Government's Exhibit 24 for identification, I will direct your attention to Check No. 8302 and ask if you would describe that check and the stub note entry to the Court and jury? A. Rudolph Deutsch for $824 for Christmas gifts.

Q. Would you turn the check over, please, and does that check bear an endorsement? A. Rudolph Deutsch Industrial Sales.

(321) Q. Now, we will direct your attention to check No. 8207. Would you describe that check, please, for the Court and jury? A. "Cash, $25.00, shipping expense for packages."

Mr. Kiernan: The Government offers Exhibit 24, your Honor.

Mr. Knachel: Well, I object to the general offer. The check I have no objection to.

The Court: What is the purpose of this whole file?

Mr. Kiernan: We will merely offer the two checks that we made reference to at this time.

Mr. Knachel: That's all right.

Mr. Kiernan: We might be able to save a little time here, your Honor.

(Conference between counsel.)

Mr. Kiernan: There has been a stipulation between the Government and the defense that the minutes of Joint Council 41 for the years 1955—that would be starting February 21, 1955—through December 17, 1956, that these minutes do not contain any reference to the gifts that have been discussed here in Court. The minutes are offered for the sole purpose of showing that there was no mention made.

(322) Q. Now, Mrs. Passalaqua, I hand you what has been marked Government's Exhibit 26 for purposes of identification, being the minutes of the Joint Council No. 41 for the year 1958, and ask you to turn to the minutes for August 14, 1958. I will ask you to read starting with the third paragraph of these minutes.

Mr. Knachel: Well, wait a minute. Let me see what that is.

(Thereupon Mr. Knachel examined the document referred to.)

Mr. Knachel: I want to object to any reading of this material, your Honor.

The Court: I don't know what it is.

(Thereupon the Court examined the document referred to.)

The Court: Is it the third paragraph?

Mr. Kiernan: Starting with the third paragraph, your Honor.

The Court: Where the Chairman continued his report?

Mr. Kiernan: That's right.

The Court: And through the rest of it?

Mr. Kiernan: Yes, sir. May we approach the bench, and I will explain to the (323) Court the purpose of offering this.

The Court: I think you will have to explain it to me. From what I have read I don't see how it has anything to do with the issues in this case.

(Conference between Court and counsel out of the hearing of the jury.)

The Court: If there is an objection, I will sustain it.

Q. Mrs. Passalaqua, I hand you what has been marked Government's Exhibit 30 for purposes of identification, and with particular reference to the letter on top, may I ask if you can identify it?

Mr. Knachel: May I see it first?

Q. Just answer yes or no. A. Yes, I can identify it.

(Thereupon Mr. Knachel examined the letter referred to.)

Q. Will you state what it is, please?

Mr. Knachel: Objection.

The Court: What is it?

(Thereupon the Court examined the letter referred to.)

(Conference between Court and counsel out of the hearing of the jury.)

(324) The Court: The objection is sustained.

Mr. Kiernan: No further questions.

The Court: Any questions?

CROSS EXAMINATION OF AIDA PASSALAQUA.

By Mr. Knachel:

Mr. Knachel: Mr. Kiernan, I would like to tear this check out and make an exhibit out of it.

Mr. Kiernan: It is an exhibit.

Mr. Knachel: I know, but I would like to have it marked as a Defendant's exhibit.

Mr. Kiernan: I don't want it detached from the check stub.

Mr. Knachel: I am going to have the stub too.

Q. Mrs. Passalaqua, are all of the officers of the Joint Council on the payroll? A. No, sir.

Q. Are you sure about that? A. Not on the weekly payroll. They do get a subsistence for being a Board Member.

Q. Well, then, are they paid for that? A. They do get a monthly pay, yes, not as a steady (325) payroll, though.

Q. What is your steady payroll? A. Each week.

Q. On what day? A. Thursday or Friday.

Q. On the day that Mr. Sheridan was there, on the two days following that was Mr. Presser in Cleveland or was he out of Cleveland? A. Mr. Presser was out of town the day after Mr. Sheridan was in, but I couldn't tell you how long he was out of town.

Q. And a couple of days following Mr. Sheridan's first visit, did you receive any telephone communications from him? A. I received a call from the office—I am not quite sure it was Mr. Sheridan or not, they just asked if the records were ready for him.

Q. And was that the only call you got? A. I don't recall that I got—you mean from his department?

Q. Yes. A. I don't recall of getting any more calls.

(Thereupon the check referred to before was marked by the Clerk Defendant's Exhibit D.)

Q. I hand you what has been marked for identification (326) Defendant's Exhibit D. This is the check about which you testified, dated December 29, 1955, to Rudolph Deutsch Company for $824. Is that in your handwriting? A. Yes, it appears to be in my handwriting.

Q. The part of Government's Exhibit 12 down there marked "Paid 12/29, No. 8302," is that in your handwriting? A. It appears as though it would be my handwriting, yes, although I have seen handwriting that didn't look like mine. But that looks like mine.

Q. Refresh your recollection from the check. Is that part of your business to mark those things on it after you have issued a check on them? A. I do on some, and some I don't.

Q. But you did on this one? A. It appears to be in my handwriting.

Q. And is the handwriting on the stub which says, "December 29, 1955, Rudolph Deutsch Company, Christmas gifts," is that in your handwriting? A. If I wrote out the check I wrote out the stub.

Q. During the time that you say you received a call from the field office of the Select Committee, after the first time Mr. Sheridan was there, I believe on the day following, or the day after that, did you have any conversations with Mr. Presser about that? (327) A. Yes. I don't recall whether he called me or whether I called him. I believe I got a call from him and I told him about the department's request for the material on the telephone.

Q. Did he tell you to give it to them then? A. I don't recall whether he told me to give it to them or not—

Mr. Kiernan: Wait a minute. We can't hear the questions.

Mr. Knachel: I am sorry.

Q. What did Mr. Presser tell you to do as a result of this conversation? A. He told me to call the department and tell them to come and get the material.

Q. Did you call the field office? A. I must have, if Mr. Presser told me to. I don't recall.

Q. Did you have a conversation with someone in the field office? A. I must have, yes.

Q. What was that?

Mr. Kiernan: Objection, your Honor.

The Court: Well, unless she can identify who it was with.

Q. But you conveyed that information to the field office?

Mr. Kiernan: Objection again.

(328) The Court: What is it? Conveyed what?

Q. You conveyed the information from Mr. Presser to the field office? A. Yes, I did.

Mr. Knachel: That's all.

(329)

RE-DIRECT EXAMINATION OF AIDA PASSALAQUA.

By Mr. Kiernan:

Q. Now, Mrs. Passalaqua, you testified that Mr. Presser was out of town the day following the visit of Mr. Sheridan? A. Yes.

Q. Do you remember what date that was? A. Well, if Mr. Sheridan was there on the 9th, it must have been the 10th or 11th.

Q. And you say Mr. Presser was out of town on the 10th and on the 11th? A. He was out of town a couple of days now.

Q. And on those two days? A. He wasn't there the day after Mr. Sheridan was there.

Q. Was he there any part of the day after? A. Not that I recall, no.

Q. Do you recall where it was he went? A. No, I don't.

Q. How do you happen to remember now some two years later that he went out of town the two days after? A. Due to the fact that the call I got for the photostatic copies of the records.

Q. When do you remember getting this call? A. It might have been the day after the day after that. I don't recall.

(330) Q. Did you ever bring that call to the attention of the Grand Jury? A. I believe I told them Mr. Presser was not in the office the day after.

Q. Are you positive of that? A. I am almost sure of that, sir.

Q. But you could be wrong? A. I could be.

Q. And you say that Mr. Presser was out of town on the 10th and on the 11th? A. I would say the dates, yes.

Q. But you don't recall where he went? A. No, I don't.

Q. No idea at all? A. Pardon?

Q. No idea at all where he went? A. I have no idea. I presume he was in Washington, but I am not sure.

Q. Now, Mrs. Passalaqua, I make reference again to refresh your recollection to your testimony before the Grand Jury on October the 21st, 1955. Do you recall whether or not you were asked this question:

> "Q. Did Mr. Presser come to the office that following day?
>
> A. Yes. Wait, that I am not now sure.
>
> **(331)** I know he left town or he had—wait a minute now."

The record shows thinking.

> "That I really don't know. I can't answer truthfully whether he was in the office or not."

A. Well, if it is in the record I must have said that.

Q. Now, this was approximately six months ago that you testified before the Grand Jury in Washington, D. C.? A. Yes.

Q. Would there be anything that occurred since that time to make your memory any better? A. I have been trying to go over my testimony in my own mind as to what I did say and what I could have—if I could have told more or not. And I know that Mr. Presser was out of town. I remembered at that point of my call to the Department Office here.

Q. You say now you remember that he was out of town? A. Well, I have been remembering these several other things.

Q. Are there some records of Joint Council 41 that show he was out of town at that time? A. There should be records of Mr. Presser being out of town.

Q. Well, what type of records would there be? A. It all depends on how he traveled and where he stayed.

Q. Well, could you state whether or not the Grand Jury (332) subpoenaed records which would show the travel of officers? A. That I don't know.

Q. Mrs. Passalaqua I will hand you what has been marked Defendant's Exhibit C and ask you to read the items which were subpoenaed from Joint Council 41 by the Government. A. "To produce before the Grand Jury the following original records of Joint Council 41: minute book for year 1958, records showing travel of all officers for the period July 1, 1958 to December 31, 1958, constitution and by-laws of Joint Council 41 in effect since January 1, 1955."

Q. Now, Mrs. Passalaqua, if this subpoena was answered by the attorney and accountant for Joint Council 41, and he testified to the Grand Jury that the only record of travel that would be available would be the disbursement book, would you say that he was incorrect?

Mr. Knachel: Now wait a minute. I want to object to this.

The Court: Well, you are testing her judgment by somebody else.

Mr. Kiernan: That is right, your Honor.

Mr. Knachel: Wait a minute.

Mr. Kiernan: The accountant and the (333) attorney. The subpoena was directed to Joint Council 41. Joint Council 41 was the organization that picked—

The Court: Was this directed toward this witness, this subpoena?

Mr. Kiernan: The witness for—

The Court: Was the witness subpoenaed to bring these papers in?

Mr. Kiernan: Joint Council—

Mr. Knachel: Isn't there something I can say in this Court room?

The Court: Just a minute.

Mr. Knachel: May I be heard?

The Court: Just a minute. Was this witness, Mrs. Passalaqua, subpoenaed to bring these?

Mr. Kiernan: No, your Honor.

Mr. Knachel: Mr. Cozza—

Mr. Kiernan: The Defense today introduced a subpoena which was served back in November on Joint Council 41. This subpoena called for records showing travel of all officers for the period of July 1, 1958 to December 31, 1958. Now no records of that type were produced to the Government.

(334) Mr. Knachel: Now wait a minute.

The Court: Wait a minute. Why ask this witness—

Mr. Knachel: May I be heard?

The Court: Just a minute. This witness hasn't anything to do with bringing in the records. Why ask her?

Mr. Kiernan: May your Honor please, this witness is the witness who keeps the records of Joint Council 41. She is the office secretary. She is the one who makes the entry and should be familiar—

Mr. Knachel: Well, I am going to be heard if it takes all day.

The Court: It is a Chinese puzzle to me. I don't exactly see why she should be asked about any travel records that Presser went out of town that weren't produced. The subpoena wasn't directed to her. She probably gathered together what material was asked for. I want to hear from the other side for a minute.

Mr. Knachel: If I could be heard, I would like to say that the vice of this is (335) that they are assuming that he was on Council 41 business when as a matter of fact he was not.

The Court: Well, that is a weakness in it. It doesn't necessarily mean he was away on Council business. I will sustain the objection to it.

Mr. Kiernan: May it please the Court, I move that the statement made by Defense counsel be stricken from the record. He made the statement that Defendant William Presser was out of town on personal business.

Mr. Knachel: I did not say that. I said the vice was that in assuming that he was on Council 41 business.

The Court: Well, there is no evidence of where he was at all.

Q. Mrs. Passalaqua, you have testified that the defendant was out of town those two days? A. To my knowledge he was out of town, yes.

Q. Now are there any records that you know of of Joint Council 41 which show that he was out of town? A. I wouldn't have the records, sir.

Q. Do you know of any records that would be kept which would show? A. Not in my office, sir.

(336) Q. Well, do you know of any place else where records are made other than your office of Joint Council 41?

Mr. Knachel: Well, I am going to object.

The Court: Well, what is the question? Whether she knows of any records?

Mr. Kiernan: Your Honor, this is the office secretary, the office manager of Joint Council 41.

The Court: Well, would you have records of every trip that Mr. Presser took if it were on business of the Council?

The Witness: I wouldn't have the records, no.

The Court: Where would they be found?

The Witness: Either he would keep them or our CPA would have them.

Q. Would you make the record—

Mr. Knachel: What difference would it make if he wasn't on Council 41 business?

The Court: She answered it.

Mr. Kiernan: Your Honor, I am trying to determine what type of records are made.

The Court: Well, if she knows she (337) can answer.

Q. Now, do you make any records which would show if the defendant was out of town? A. If he was on Council business, yes, it would be marked travel.

Q. And it would be entered where? A. In our Journal.

Q. Cash Book, in your disbursement book for 1958? A. Yes.

Q. Now, Mrs. Passalaqua, I will hand you what has been marked Government's Exhibit 27 for purposes of identification, this purporting to be the expenditures book for Joint Council 41. I will direct your attention to the month of September, 1958, and ask you whether or not that book shows that the defendant was out of town on the 10th or 11th or any time during that week?

Mr. Knachel: On Council 41 business.

The Court: Yes, I think that ought to be in.

Mr. Kiernan: Within the possibility of what the book can do.

A. Nothing shows here that Mr. Presser was on Council business on September—what was it?

Q. No entry in that book that shows he was out of town? A. Not on Council business.

(338) Q. Well, on Council business or any other business is there an entry?

Mr. Knachel: Wait a minute, that is unfair.

The Court: Just a minute, be fair with the witness, Mr. Kiernan. She has tried to answer you, I think. She says there is no record of his having been away on Council business and that is the only record they keep.

Q. And that is the only trip that would show in this book? A. That's right.

Q. Now, Mrs. Passalaqua, I will hand you what has been marked Government's Exhibit 29, the cancelled checks and check stubs of Joint Council 41 for the period August through September of 1958.

The Court: Now, is this redirect?

Mr. Kiernan: Yes.

The Court: On what ground?

Mr. Kiernan: This witness testified on cross examination that the defendant was out of town for two days. We established to begin with that she is a hostile witness and we didn't ask her any questions about where the defendant was. She developed on cross that she said the (339) defendant was out of town on the 10th and 11th.

The Court: Does this tend—

Mr. Kiernan: Yes, we believe so.

Q. Now I will direct your attention to the dates and month of the 9th, 10th, 11th and 12th of September and ask you to find those checks, please. A. (Witness complying.)

Q. With particular reference, we will start with Check 11505. A. Yes.

Q. Would you read the date on that check? A. September 9, 1958.

Q. Would you read the signature on the check? A. On the back of the check?

Q. No, who was it signed by? A. Mr. Presser and Mr. Cimino.

Q. Now I call your attention to Check 11506 dated September 10. A. Yes.

Q. There is a check contained in there with that number? A. Yes.

Q. And does that bear the signature of Mr. Presser? A. That's right.

Q. And Checks 507, 508 and 509 also dated September 10th? A. Yes.

(340) Q. Now I will direct your attention to Checks starting with 11510. A. Yes.

Q. And they are dated September 11th, is that not correct? A. That's right.

Q. And they also are signed by Mr. Presser, is that not correct? A. That's right.

Q. Now I call your attention to Check 11522 and 11523. Do those checks bear Mr. Presser's signature? A. Yes, they do.

Q. And they are dated September 12th? A. That's right.

Q. Now I will draw your attention again to Check 11510. A. Yes.

Q. And that check is dated September the 11th, is that not right? A. That's right.

Q. Who was that check made out to? A. William Presser.

Q. And that is his payroll check, is that not correct? A. That's right.

Q. And would you turn the check over, please, and tell the jury when that check cleared? Is it endorsed by Mr. Presser? (341) A. Yes.

Q. Could you tell when it cleared the bank? A. September the 11th.

Q. And that is the bank right here in Cleveland, isn't that right? A. That's right.

(342) Q. Now, after looking at the checks, does that refresh your recollection as to whether or not Mr. Presser was in town on the 9th, 10th and 11th and 12th of September? A. Mr. Presser was in town on the 9th, I am positive, because that's the day Sheridan was in, I believe.

Q. On the 11th, when he received his payroll check, was he there? A. His payroll checks are put in his desk many times without Mr. Presser being there.

Q. Well, he endorsed the check, did he not? A. Yes.

Q. And it cleared the bank—it went through the Credit Union, did it not?

Mr. Knachel: On the 12th, yes.

Q. It went through the Credit Union, and it cleared the Cleveland Trust Company or the City National Bank, one or the other, on the 12th, is that not correct? A. That's right.

Q. I will hand you what has been marked for identification as Government's Exhibit 30, which was testified to as being the correspondence for Joint Council 41, and I will ask you whether or not you can identify these two letters, one dated September 9th and one dated September 10th? (343) A. Yes, I can.

Q. Directing your attention particularly to the letter dated September 10th—

Mr. Knachel: Wait a minute. May I see those letters, sir? Let's have the same rule for both.

(Thereupon Mr. Knachel examined the documents referred to.)

Mr. Knachel: This is the same thing all over again, your Honor.

The Court: I don't think they are offered, except for the dates.

Mr. Kiernan: That's right, your Honor.

The Court: That's the limited purpose.

Mr. Knachel: All right.

Q. Now, Mrs. Passalaqua, I will ask you if you can identify these two letters? A. Yes.

Q. These two letters were typewritten by you, were they not? A. Yes, they were.

Q. And they were dictated to you by William Presser, were they not? A. That's right.

Q. And they are dated September 9th and September 10th? A. Dates mean nothing, unless it were an important letter.

(344) Mr. Kiernan: No further questions.

RE-CROSS EXAMINATION OF AIDA PASSALAQUA.

By Mr. Knachel:

Q. Mrs. Passalaqua, you have told us you have a payroll, weekly? A. That's right.

Q. And what day is payday? A. Thursday or Friday.

Q. Assume that would be the 11th and 12th, what do you do about your payroll checks when your boss is out of town? A. When he goes out of town he signs checks in advance to cover payrolls or any bills I might have to cover for that period of the month.

Mr. Knachel: That's all.

The Court: You are excused, Mrs. Passalaqua.

The Witness: Thank you, your Honor.

The Court: Call your next.

Mr. Kiernan: We will call Miss Madio.

Mr. Knachel: Your Honor, as I understand the law, if a witness testifies for the (345) Government aren't we entitled to the transcript of the testimony before the Grand Jury?

The Court: Well, she was asked questions whether or not she testified—

Mr. Knachel: No, I mean as a general rule in these cases, on all these witnesses.

The Court: She was asked about her testimony before the Grand Jury.

Mr. Knachel: Yes, all I am saying is if there are any more Government witnesses to testify, aren't we entitled to have a transcript of their testimony before the Grand Jury under the Federal Rules of Criminal Procedure?

The Court: I don't know. You will have to show me that.

Mr. Knachel: Title 18, Section 3500, your Honor.

The Court: No, I don't think that applies to Grand Jury testimony at all. That refers to statements taken by the Government. If they have any statement taken from the witness, it refers to that, but it doesn't apply to the Grand Jury testimony. There is not a word in that section about Grand Jury (346) testimony. It's all statements taken by the Government. If they took statements generally of some of your witnesses.

Mr. Knachel: If they took stenographic statements.

The Court: That doesn't mean testimony before the Grand Jury. If they meant so they would have said so.

Mr. Kiernan: May it please the Court, the rule on the particular point is that Grand Jury testimony is not covered by the statutes. The legislative history of the statute referred to discloses that fact, and there have been cases since in the Court of Appeals, and I believe one of them was affirmed by the Supreme Court, holding that it does not apply to Grand Jury testimony.

However, there is one exception, if it appears that the witness' testimony on the stand differs from what it was before the Grand Jury, then the Court can look through the Grand Jury testimony to determine whether or not it should be disclosed.

The Court: Statements that are (347) contradictory to statements made at a different time.

Mr. Kiernan: That's right.

The Court: This refers to any statement made to the Government.

Mr. Knachel: How do you know that a contradiction exists unless you see it?

The Court: Well, there hasn't been any evidence of that. In other words, Mrs. Passalaqua was not interrogated as to whether she made a different statement before the Grand Jury.

Mr. Knachel: No, I'm not talking about her testimony. I wanted to know what my rights were in the future.

The Court: I don't think you are entitled to the Grand Jury testimony. Call your next witness.

(348) Thereupon the Government called as a witness **Ann Madio**, who, being first duly sworn, was examined and testified as follows:

Direct Examination of Ann Madio.

By Mr. Kiernan:

Q. Would you please state your name in full? A. Ann Madio.

Q. Your business or occupation?

The Court: Wait a minute. Let me get the name. How do you spell your name?

The Witness: M-a-d-i-o.

Q. Your business or occupation, Miss Madio? A. Office secretary.

Q. Of what organization? A. The Cab Drivers Union.

Q. That's Local 555? A. That's right.

Q. And Mr. Presser is President of Local 555, is that right? A. Yes, sir.

Q. In addition to the fact that you are the office secretary for Local 555, do you on occasions help out in the office of Joint Council No. 41? (349) A. That's correct.

Q. And you are on a small retainer, as it were, a small weekly pay and are available to help them if they need help, is that correct, ma'am? A. I was.

Q. And the type of work you do, as we understand it, you take the work from the office of Joint Council 41 and normally would do it in your own office, or some other place? A. That's correct.

Q. And normally that would have to do with sending out notices and such? A. Yes.

Q. Do you have anything to do generally with the files of the Joint Council No. 41? A. No, nothing at all.

Q. Directing your attention to September, 1958, did you have anything to do with the files of Joint Council 41? A. No.

Q. I will hand you an invoice, Miss Madio, which has been marked Government's Exhibit 12, and ask you if you have ever seen that before (handing document to witness)? A. No, I have not.

Q. Did you have anything to do with—this is a silly (350) question, Miss Madio, but we will ask it anyway—did you have anything to do with the destruction of this record? A. No, I didn't.

Q. Or its alteration? A. No, I didn't.

Mr. Kiernan: No further questions.

The Court: That's all. Any questions?

Mr. Knachel: No, I have no questions.

The Court: Members of the jury, we will take a short recess at this time.

(Recess taken.)

(351) The Court: Call your next witness.

Mr. Kiernan: Miss Lillian Tavensky.

Thereupon the Government called as a witness LILLIAN TAVENSKY, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION OF LILLIAN TAVENSKY.

By Mr. Kiernan:

Q. Would you please state your full name? A. Lillian Tavensky.

The Court: Is that Mrs.?

The Witness: Yes.

Q. Mrs. Tavensky, what is your business or occupation? A. I am an auditor.

Q. Are you employed by a company? A. Yes.

Q. Would you state the name of the organization for which you work? A. Cozza & Steuer.

Q. How long have you been employed by Cozza & Steuer, ma'am? A. A little over four years.

Q. And that is Michael Cozza? A. Yes.

(352) Q. Among the clients that Cozza & Steuer have is Joint Council 41, is that correct? A. Yes.

Q. Do you, in your official capacity for Cozza & Steuer, perform any services for Joint Council 41? A. I don't understand.

Q. Well, do you do any work for Joint Council 41? A. No.

Q. Well, Mrs. Tavensky, what is the nature of your job? A. I audit the books of Joint Council.

Q. You audit the books of Joint Council 41. And you are paid by Cozza & Steuer, is that correct? A. That's right.

Q. And you assume that Joint Council 41 pays Cozza & Steuer in return, isn't that correct? A. I assume so.

Q. How long have you been auditing the books and records for Joint Council 41, Mrs. Tavensky? A. About four years.

Q. Since 1956 sometime? A. Yes.

Q. Does anyone else, to your knowledge, perform that task for the firm of Cozza & Steuer? A. Mr. Cozza.

Q. Well, any other employee? (353) A. No.

Q. Now, in the course of your duties, do you have occasion to go to the offices of Joint Council 41? A. Yes.

Q. Would you state where they are, please? A. 2070 East 22nd Street.

Q. And when you go there, you review the books and records, is that right? A. Yes.

Q. How frequently do you go to the office of Joint Council 41? A. Every month.

Q. Any particular time of the month? A. No, no set time.

Q. When you get to the office of Joint Council 41 on these monthly trips, where do you get the books and records that you work on? A. I pick them up at the office of the Joint Council.

Q. More specifically, are they on the desk, are they handed to you, or are they in a file cabinet? A. They are handed to me.

Q. By whom? A. By the secretary.

Q. Now, Mrs. Tavensky, I will call your attention to what has been marked Government's Exhibit 12, and ask if you (354) can identify it, please? A. No.

Q. You have never seen this invoice before? A. I have been shown something similar to that once before.

Q. Where was that, ma'am? A. In Washington.

Q. Before the Grand Jury there? A. Yes.

Q. Needless to say, you do not know anything about the destruction of this document? A. No.

Q. And you yourself are not responsible for it? A. No.

Q. Now, Mrs. Tavensky, directing your attention to March of this year, did you receive a subpoena to appear before a Grand Jury in this building? A. Yes.

Q. And after you received the subpoena, did you file a motion to quash it? A. Yes.

Q. Do you recall who it was who represented you on that occasion? A. I believe it was Mr. Garmone.

Q. Are you positive whether or not it was Mr. Garmone? A. Well, he was there when I signed it.

(355) Q. Did you retain Mr. Garmone for that purpose? A. I don't know how to answer that.

Q. Well, did you go to Mr. Garmone's office and ask him if he would represent you? A. No, I didn't ask him.

Q. Was it your idea to move to quash that subpoena? A. Was it my idea?

Q. Yes, ma'am. A. No.

Q. Who suggested to you that you should do that? A. Well, Mr. Garmone.

Q. And you subsequently appeared in court here and Judge Jones ruled on the subpoena, and he asked you to go before the Grand Jury, is that right? A. Well, I appeared before the Grand Jury, yes.

Q. Did you testify at that time? A. I was here. I don't know what you mean by "testify."

Q. Did you tell any story? Did you tell us anything when you came before the Grand Jury? A. No.

Q. You refused to testify, is that not correct? A. Yes.

Q. Now, was it your idea to refuse to testify? A. No.

Q. Who suggested that you do that? (356) A. My employer.

Q. And that is whom? A. Miss Steuer.

Q. And she is of the company Cozza & Steuer? A. Right.

Q. And they represent the defendant, William Presser? A. I don't know what—

Q. Does the firm of Cozza & Steuer represent Mr. William Presser, defendant, as attorneys and accountants? A. Yes.

Q. And at the time that you appeared here in court with Mr. Garmone after he suggested that you move to quash the subpoena, did Mr. Garmone represent the defendant, William Presser? A. Yes.

Mr. Kiernan: No further questions.

The Court: Any questions?

(Articles marked for the purposes of identification as Defendant's Exhibits E and F.)

CROSS EXAMINATION OF LILLIAN TAVENSKY.

By Mr. Knachel:

Q. Mrs. Tavensky, how many times did you appear before the Grand Jury in Washington, D. C.? A. Twice.

(357) Q. I hand you Defendant's Exhibits E and F, and ask you whether or not these are the subpoenas under which you went to Washington, D. C. to testify before the Grand Jury? A. Yes.

Q. One called for your appearance on November 4th, 1959, and one for January 20, 1960, is that correct? A. I believe so. I can't remember.

Mr. Knachel: That is all.

The Court: You are excused, Mrs. Tavensky.

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(358) The Court: Call your next witness.

Mr. Kiernan: We will call Donald Pfeiffer.

Thereupon the Government called as a witness DONALD F. PFEIFFER, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION OF DONALD F. PFEIFFER.

By Mr. Kiernan:

Q. Would you please state your full name, Mr. Pfeiffer? A. Donald F. Pfeiffer.

The Court: How do you spell your name?

The Witness: P-f-e-i-f-f-e-r.

Q. Mr. Pfeiffer, you reside in Columbus, Ohio, is that correct, sir? A. I do.

Q. And you are an officer of the Ohio Conference of Teamsters, is that right? A. Yes, sir.

Q. What position do you hold in the Ohio Conference of Teamsters? A. I am Secretary-Treasurer.

Q. Could you tell the Court and jury in general terms (359) what is meant by the Ohio Conference of Teamsters, what type of organization it is? A. It is an organization chartered by the International Brotherhood of Teamsters that takes in all the organizations, teamsters' organizations within the State of Ohio.

Q. Could you state what its function or purposes are? A. Well, the purposes of an organization of that sort is to try to concert our efforts, the efforts of local unions within the State in legislative matter in state-wide bargaining, differentiated from local bargaining, and in attempting to coordinate their activities, mostly for legislative purposes.

Q. Mr. Pfeiffer, could you say whether or not Mr. Presser, the Defendant, is an officer in the Ohio Conference? A. He is.

Q. What office does he hold, sir? A. He is Chairman or President.

Q. Chairman or President? That would be approximately the same thing? A. That's the same thing.

Q. Now, Mr. Pfeiffer, to your knowledge, do you know that Mr. Presser is also the President of Joint Council 41? A. I do.

Q. Could you state what the difference in functions are (360) between the Joint Council as opposed to the Ohio Conference? A. The Joint Council is an area organization with jurisdiction over a certain number of counties within an area. To explain what I mean, there are three Joint Councils in Ohio, and they take care of the matters of the affiliated local unions within their jurisdiction, differentiated from the Conference which has state-wide jurisdiction. The Joint Councils also must okay any strike sanctioned by any of its affiliated local unions before it can be okayed by the International Union.

Q. Now, Mr. Pfeiffer, directing your attention to August of 1958, did the Ohio Conference of Teamsters have occasion to retain former Senator Bender for any particular purpose?

Mr. Knachel: Objection.

A. To retain?

Q. To hire or retain Senator Bender, the former Senator, for any purpose?

Mr. Knachel: Objection.

The Court: What is the purpose of that question?

Mr. Kiernan: Again, sir, to show the relationship that existed between the (361) Teamsters and Senator Bender.

Mr. Knachel: Three years ago.

Mr. Kiernan: Right at the time the document was destroyed, that's the time we are talking about.

Mr. Knachel: I object.

Mr. Kiernan: To show that there was the relationship at that time, and since Bender had at that time just been hired, or shortly thereafter, to the clean-up committee of the Teamsters, it goes to show the motive for destroying the invoice, to possibly conceal that fact from the Committee.

Mr. Knachel: I thought this Christmas gift was in 1955.

Mr. Kiernan: Your Honor, the invoice was destroyed in 1958. We are not concerned with the motive for giving the gift, we are concerned with the motive for destroying the invoice in September, 1958.

Mr. Knachel: You are not concerned with the motive for giving the gift?

The Court: The Committee might have been concerned.

Mr. Kiernan: The Committee might have (362) been, but at this time we are trying to develop—

The Court: What I want to know is why was it torn, if it was torn? Well, it's a matter of public record, isn't it, that Senator Bender was employed in some capacity at that time.

Mr. Knachel: In 1958.

The Court: Yes.

Mr. Knachel: He was a private citizen.

Mr. Kiernan: That's right, your Honor, but at the same time he had been hired by the local Teamsters organization before the national organization hired him.

The Court: It is conceded he was in the employ of the Teamsters Conference or Council—

The Witness: Your Honor—

The Court: In September of 1958 what was his status?

The Witness: Your Honor, to the best of my recollection, as I recall now, Senator Bender was not employed by us in September or all through September.

The Court: Of 1958?

The Witness: Of 1958.

(363) Mr. Kiernan: Yes, but the month immediately preceding that he was, according to the evidence we have.

The Court: Was he prior to that?

The Witness: He was hired, but he refused to serve.

The Court: He was not in the employ?

The Witness: He never did any work for us to my knowledge, your Honor.

Mr. Kiernan: May I ask a few preliminary questions on that point, your Honor?

The Court: Oh, well, I don't exactly see its relevancy, but perhaps there is some purpose.

Mr. Knachel: May the Defendant have an objection?

The Court: Yes, you may save an exception. He states that it would be a motive for destroying something. If he was a Senator I would think there'd be more motive than if he was an employee.

Q. Again, Mr. Pfeiffer, we are making reference to the year 1958. You say he was retained by the Ohio Conference of Teamsters for some purpose, is that **(364)** correct? A. That is right, he was retained for some purpose.

Q. And in pursuance of that employment the Ohio Conference of Teamsters sent him a check in the sum of $1000? A. That is right.

(Document was thereupon marked by the Clerk Government's Exhibit 31 for identification.)

Q. Now, I will hand you what has been marked Government's Exhibit 31 for identification, which appears to be Check No. 2923, and ask you if you can identify it? A. Yes, that is my signature.

Q. Is that also Mr. Presser's signature? A. Yes, that is Mr. Presser's signature.

Mr. Kiernan: The check is offered in evidence, your Honor.

Mr. Knachel: Objection.

The Court: What is it?

Mr. Kiernan: I will develop it further.

Q. This is a check to George Bender, is that correct? A. Yes, sir.

Q. In the amount of $1000? A. In the amount of $1000.

Q. From the Ohio Conference of Teamsters, dated August 15, (365) 1958? A. I didn't notice the date, but I'll take your word for it.

Q. (Handing document to witness.) A. Yes, sir, that's right, August 15, 1958.

Q. Could you state whether or not the check was cashed? It appears to bear the endorsement of Mr. Bender? A. I imagine so. That looks like it to me, yes.

Mr. Kiernan: The Government now offers Exhibit 31 in evidence.

The Court: This is received for the limited purpose of endeavoring to show a motive for the Defendant Presser, if he did, in destroying the sheet which contained the name of Bender. That's the only limited purpose, not to drag Bender into this, but the Government claims that that furnishes a motive for destroying the sheet. To that extent it probably is narrowly admissible. You may save an exception for the Defendant.

Q. Subsequent to this time, August 15, 1958, Mr. Pfeiffer, did it come to your attention that the Teamsters International had formed a clean-up committee? A. I read it in the paper, and we got some notice in our International magazine.

(366) Q. And the head of that clean-up committee was also Mr. Bender, is that correct?

Mr. Knachel: I object to that, your Honor.

The Court: Well, now, what are you going into now?

Mr. Kiernan: It's along the same line, your Honor, but it shows more positive notice on the part of the Defendant.

The Court: Well, you have shown that Bender was in the employ. Why develop it further?

Mr. Kiernan: May it please the Court, I think it would be more fair to Senator Bender if I were allowed to complete this line of testimony.

The Court: How much is there?

Mr. Kiernan: Not very much, your Honor.

The Court: Go ahead. You may preserve an exception.

Q. Subsequent to that time, Mr. Pfeiffer, did Mr. Bender write a letter to the Ohio Conference of Teamsters and return the payment of $1000? A. He did.

(367) Q. And did he say at that time that it might give rise to an apparent conflict of interest? A. I believe so. I don't have the letter. I think you have that letter.

(Thereupon documents were marked by the Clerk Government's Exhibit 32-A and 32-B for identification.)

Q. Now, Mr. Pfeiffer, could you state how it first came to your attention that Mr. Bender was returning the thousand dollar payment that he had received? A. I believe—I am a little hazy on that subject because at the time I was awfully busy. I was out of town in Colorado at the time. But if my memory serves me right I received a letter from

Mr. Bender and a letter from Mr. Presser together with the check for—the letter I believe was not addressed to me. Is that right? You have the letter.

Q. I show you Government's Exhibits 32-B and 32-A and ask if you can identify them, sir? A. Yes. All right. I can answer your question now, I have got some records that I can see.

The letter was on August 24th from Mr. Bender addressed to me, and he said he is therefore returning the hundred dollars advance payment—or, the thousand dollar advance payment.

(368) Q. What all did he say, sir? A. Sir?

Q. What did he say in its entirety? A. I will read it. "Having accepted the Chairmanship of the International Brotherhood of Teamsters Anti-Racketeering Commission it will be impossible for our firm to undertake the assignment regarding the study and operation of the Valentine Act. I am therefore returning the $1,000 advance payment. Thanking you for your consideration of our firm."

Q. Could you now refer to Government's Exhibit 32-B and state how that letter came to your attention? A. This is a letter from Mr. Presser dated September 9th, which says, "Enclosed find letter and check which are self-explanatory. Did not forward this to you immediately, somehow unthinkingly I placed it in one of my files, and did not run across it until this morning. I should have mailed this to you upon receiving same, which was either on the 25th or 26th. However, as long as Mr. Bender feels that there will be a conflict of interests, it is necessary we find someone else to further process our problems under the Valentine Act."

Mr. Kiernan: May it please the (369) Court, the Government offers Exhibits 32-A and 32-B in evidence.

Mr. Knachel: Objection.

The Court: Well, what does it show? How does it support your theory?

Mr. Kiernan: May it please the Court—

The Court: I may be a little bit dull, but I don't quite see the import of it.

Mr. Kiernan: It is the Government's contention that at the time the invoice was destroyed there existed an apparent close relationship between Senator Bender, the Defendant William Presser and Joint Council 41; that Bender was appointed by the International Organization, the Teamsters, ostensibly to clean up corruption; that Mr. Presser would want to hide his previous relationship to Bender from the Committee, and in accordance with that, that would be one motive that he would have for destroying the invoice.

Now this particular set of correspondence shows that Bender had been hired by Mr. Presser and Mr. Pfeiffer on behalf of their organization. Bender wrote back in August and the letter came (370) to Mr. Presser's attention on September 9th, the very day that Walter Sheridan testified he was in Mr. Presser's office.

In his letter to Mr. Presser and Mr. Pfeiffer of the Ohio Conference, Bender pointed out that because of what might appear to be a conflict of interest he was turning back the thousand dollar check. This could very easily and logically have suggested to Mr. Presser on the same date, September 9th, that he too should take steps to avoid any show that there would be conflict of interest or a close tie between him and Bender.

The letter further shows, your Honor, that Mr. Presser, of course, was in the office on the 9th because that is the day it is dated, and it further shows that on the 9th of September he was interested and he was going through his files, which may have been significant in the light of the fact—

The Court: Well, if you want to argue that, you can. I will receive it for the limited purpose.

Mr. Knachel: Exception.

The Court: But we don't want to (371) get into the trial of Bender here because he is not present.

Mr. Kiernan: That is not the point of this at all. I have no further questions.

The Court: Any questions?

Mr. Knachel: No questions, your Honor.

The Court: No questions. You are excused.

The Witness: Thank you.

The Court: Call your next witness.

Mr. Kiernan: May it please the Court, do you have any idea how long you expect to go now?

The Court: Well, until 4:30.

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(372)

Max B. Keesling, called as a witness on behalf of the Government, being first duly sworn, was examined and testified as follows:

Direct Examination of Max B. Keesling.

By Mr. Hudspeth:

Q. Would you state your full name, please? A. Max B. Keesling.

Q. And your address, please? A. 6238 Big Creek, Parma—

The Court: Will you give me your name again?

The Witness: Keesling.

Q. Would you give your address again? A. 6238 Big Creek Parkway, Parma Heights 30.

Q. Where are you employed, Mr. Keesling? A. Capitol Airlines.

Q. What is your position with that company, sir? A. Sales representative.

Q. How long have you been employed by Capitol Airlines? A. Nine years.

Q. What positions have you held during that time? A. Ticket Audit Clerk, Refund Audit Clerk, Ticket Agent, Reservations Agent, Reservations Manager, Passenger (373) Service Manager, and my present position.

Mr. Hudspeth: May it please the Court, this stipulation was entered into before trial concerning several records of Capitol Airlines as to their authenticity, the fact that they are business records kept in the regular course of business.

The Court: Yes.

Q. Mr. Keesling, are you familiar with the practices, the business practices of Capitol Airlines and the records they keep? A. I am.

Q. I will hand you those three records, sir, and would you please tell the jury what those records show and what they appear to be? A. The first one I pick up appears to be a photostatic copy of a flight coupon. All three of them do, as a matter of fact, appear to be photostatic copies of flight coupons.

Q. And the first one that appears there, would you identify that more specifically? A. This is a flight coupon that was valid for transportation between Washington, D. C. and Cleveland, Ohio on our Flight No. 911, September 8th, 8:15 a. m., (374) reservation confirmed, purchased by Air Travel Card and American Account.

Q. What was the number of that Air Travel Account? A. AQ-15140 AN.

Q. Now is it customary for whoever sells a ticket of this type to write a person's name on the ticket, is that correct? A. That is correct.

Q. However, the name that they write on the ticket is the name that the person purchasing it gives to the agent, is that correct? A. It is the name of the party holding the reservation.

Q. What name appears on that ticket, please? A. Sheridan.

Q. Now would you pass on to the next document that you hold in your hand? A. Yes.

Q. Can you tell us what that appears to be? A. This is a flight coupon valid for transportation between or from Cleveland to Chicago Illinois on our Flight No. 131 on September 12, 1958 at 8 in the morning. The reservation was confirmed. The ticket was evidently used. Purchased on Air Credit Card Account No. AQ 15140 AN. The name on the ticket was Sheridan.

(375) Q. And the next document, please? A. The next document appears to be—the next document is the return portion of that particular ticket, it was good for transportation from Chicago, Illinois to Cleveland on our Flight 232 of September 13th at 7:50 in the evening. Reservation was confirmed and, of course, the ticket was purchased on the Credit Card that I mentioned prior. Issued to Mr. Sheridan, the ticket was used.

Q. Now with respect to that last ticket that you mentioned, sir, you said that it was for a flight scheduled at 7:50 in the evening. Can you be sure of that by reading the ticket? A. How do you mean? No, I'm sorry. By looking at the flight number it is impossible to go at 7:50 in the evening. The low flight number would be 7:50 in the morning. 232.

Q. On September 13th? A. September 13th.

Q. And that is from Chicago to Cleveland? A. That is correct.

Q. And the name appearing on that ticket is Sheridan? A. Yes.

Q. One more question, sir. I believe you perhaps stated in reference to one of those tickets that it (376) was possible to tell by looking at the face of it whether or not it was used, is that correct? A. Yes, sir. You can tell that all three of them were used.

Q. How can you tell that? A. An abbreviation, a company abbreviation for cancelled is perforated.

Mr. Hudspeth: I believe these tickets have been marked for identification before, your Honor, in pursuance to a stipulation. However, I will formally offer them at this time.

The Court: All right.

Mr. Hudspeth: Any objection?

Mr. Knachel: No objection.

Mr. Hudspeth: That will be all.

The Court: Any questions, Mr. Knachel?

CROSS EXAMINATION OF MAX B. KEESLING.

By Mr. Knachel:

Q. Mr. Keesling, you don't know who was on these flights, do you? A. No, sir, we can't tell that. No, sir.

Q. I notice on one of them, 3C, that is to William J. Sheridan, isn't that correct? A. I couldn't say without looking at it again, sir.

(377) Q. All right. A. I would assume so.

Q. Well it says William. A. W. M. I would assume.

Q. W. M. J. Was there a request made for any other flights except these? A. I truthfully don't know.

Q. You don't know.

Mr. Knachel: That is all. Nothing further.

The Court: That is all. You are excused, Mr. Keesling.

Mr. Kiernan: Call Mr. Charles Schaeffer, please.

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(378)

CHARLES SCHAEFFER, called as a witness on behalf of the Government, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION OF CHARLES SCHAEFFER.

By Mr. Kiernan:

Q. Please state your full name, sir? A. Charles Schaeffer.

Q. And your business or occupation?

The Court: Wait a minute. Spell your name.

The Witness: Charles Schaeffer, S-c-h-a-e-f-f-e-r.

Q. And your business or occupation, Mr. Schaeffer? A. Seller of incentive gifts.

Q. Directing your attention to the year 1955 and '56, were you employed by the Rudolph Deutsch Industrial Sales Company? A. I was.

Q. And in the capacity of what, sir? A. Selling and managing.

(379) Q. Well, directing your attention to the Fall, November of 1955, did you have occasion to enter into a transaction with Joint Council No. 41 of the Teamsters? A. Yes.

Q. Do you recall what that transaction was, sir? A. Yes.

Q. Would you state what it was? A. We sold them some—or I sold some gifts to them.

Q. Would you state what these gifts were, sir? A. Champagne buckets.

Q. Approximately how many, do you remember? A. Eight or ten.

Q. At that time, with whom did you deal with respect to the sale? A. Mr. William Presser.

Q. Is Mr. William Presser present in the court room now? A. Yes, he is.

Q. And he is the defendant in the case, is that correct? A. Yes, sir.

Q. How long had you known Mr. Presser? A. About 25 or 30 years.

Q. Do you live in the same neighborhood as Mr. Presser? A. Yes, I do.

Q. Directing your attention to February of 1956, or approximately that time, did you terminate your employment (380) with Rudolph Deutsch? A. I did.

Q. And shortly after that, did some feeling arise between you and the personnel at Rudolph Deutsch which would be other than friendly?

Mr. Knachel: I object.
The Court: Is there some purpose in this?
Mr. Kiernan: Yes, sir, it has some significance.
The Court: All right.

A. Yes.

Q. And that happened, sir, approximately in the middle of 1956? A. Approximately.

Q. Now, from that time, the middle of 1956, until now, as a regular thing have you had any transactions with Mr. Feder or anyone else of the Rudolph Deutsch Company?

Mr. Knachel: Objection. I see no point in it.

The Court: I don't yet, but will you demonstrate what?

Mr. Kiernan: Definitely, your Honor.

The Court: All right.

Q. Now, you know Mr. Feder? (381) A. Yes.

Q. And there were not good feelings between you? A. No.

Q. And you don't normally call him? A. No.

Q. Directing your attention to September, 1958, did you, in fact, attempt to contact Mr. Feder? A. Yes, I did.

Q. Will you tell the Court and the jury the circumstances surrounding your attempted contact? A. I called and asked for information as to whether he had any bills or invoices which were sold to the Teamsters Union or to Mr. Presser and, if so, I would like to have duplicate copies of them.

Q. Would you tell the Court and jury what prompted this call to Mr. Feder? A. Yes, Mr. Presser called me prior to that and asked me if I had any records of anything that had been sold to him or the Teamsters Union in the form of gifts.

Q. Was particular reference made to the champagne masters at that time? A. I think there was.

Q. And you were not able to obtain the particular documents, is that correct, sir? A. That is correct.

(382) Mr. Knachel: He said he asked for duplicates.

Q. You did not obtain the duplicate records? A. I obtained no information from him.

Q. Did you subsequently call Mr. Presser and tell him whether or not those records were available? A. Yes, I did. I called him and told him they were not available.

Q. Do you recall what Mr. Presser said at that time? A. Well, that's it.

Q. Well, shortly after that particular call, that series of calls, did you notice any stories in the newspaper which seemed to ring a familiar chord? A. Yes.

Q. Would you state what those stories were, generally, sir? A. I beg your pardon?

Q. Would you state what those stories were? A. Well, it's rather—

Q. Would you hold it a second, please.

(Conference between counsel.)

Q. More particularly, Mr. Schaeffer, were those stories about the Congressional committee, the McClellan committee and the champagne buckets? A. I guess so.

Mr. Kiernan: I have no further questions.

(383) The Court: Any cross-examination?

Mr. Knachel: Nothing, your Honor.

The Court: No cross-examination. You are excused, Mr. Schaeffer.

Mr. Kiernan: May it please the Court, the Government at this time reoffers in evidence all of its exhibits, and the Government rests.

Mr. Knachel: The defendant objects to a number of these exhibits, sir.

The Court: Well, we will have to go over that in the morning and see what they are, and I will rule upon them if necessary.

Mr. Knachel: I think also, your Honor, the jury should see the key exhibits. I don't think they have seen them yet. I mean at some time along the line here before the case is over.

The Court: Yes.

Mr. Knachel: They haven't seen the invoice or anything in this case.

The Court: Maybe we can determine that when we determine what is admissible and what isn't admissible, and we can let the jury see them then.

(384) Members of the jury, we are going to suspend at this time. The Government has rested. It has no more evidence to offer, and there are some questions about some of the exhibits which I am not clear on, which ones I had excluded and which ones

I have admitted. But we will endeavor to get out the uncontroverted exhibits and let you see them tomorrow morning before we go any further in the case, so you will have a little better understanding of what we are talking about while I am deciding which ones should be excluded and which should be received. There are some about which there is no complaint.

In any event, we will suspend until tomorrow morning at 10:00 o'clock. You will continue to bear in mind faithfully the instructions I have given you previously respecting your conduct not to discuss the case among yourselves nor with anyone else, nor to permit anyone to talk with you about the case. You are to avoid forming or expressing any opinion regarding the merits of the case or the guilt or innocence of the defendant until the whole matter is submitted to you for your consideration and verdict. Keep your own counsel and return here tomorrow morning at 10:00 o'clock.

(Thereupon Court was adjourned to Friday, June 3, 1960, at 10:00 o'clock a.m.)

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(385) Friday, June 3, 1960, 10:00 o'clock A. M.

The following proceedings were had in the absence of the jury:

The Court: Now, what are the exhibits that counsel thought the jury ought to see? I ordinarily, in case of photographs and things of that sort that would help the jury, permit them to see those, but never fact evidence. So I wondered which ones you thought the jury ought to see.

Mr. Knachel: Well, I probably talked out of turn, but they haven't seen the invoice or the check.

The Court: Yes.

Mr. Knachel: And they haven't seen the carbon copies from the Rudolph Deutsch Company.

The Court: There would be no harm in their seeing those.

Mr. Knachel: But I thought our main problem was to determine how much of this stuff that was objected to should be admitted.

The Court: Yes, can you go over (386) the exhibits now and see what it is that you want to object to? Do you have a list there, Mr. Kiernan, that you can go over and see what has been objected to, or what has been offered and objected to?

(Discussion had off the record.)

Mr. Knachel: I certainly object to the transcript of the McClellan Committee hearings.

Mr. Kiernan: No, I wouldn't think that should go to the jury.

The Court: All right that won't go in.

Mr. Kiernan: The interim report is in evidence.

The Court: What is the purpose of the interim report?

Mr. Kiernan: Well, two particular purposes, one to show the legislative recommendation that was made, and the other purpose was to show that there was a specific interest by the Committee in the Teamsters, and that is an interest that was made a matter of public record before the destruction of this document, and this particular reference made reference to (387) the individuals whose names were listed on the document.

Mr. Knachel: This has excerpts from testimony and many other things, your Honor, that are self-serving and prejudicial.

The Court: Well, I am a little afraid of this, Mr. Kiernan. I don't think the Court should admit this to the jury. There is nothing to prevent them from looking at all of it if it goes to them. There hasn't been any issue here that the Committee wasn't properly constituted and wasn't pursuing its function in examining into and investigating labor-management relationships.

Mr. Knachel: No.

The Court: I'm afraid it is too remote. I will sustain the objection to it. I can't see that it is material in the sense that it could be used against the Defendant in this criminal trial, what was done in his absence when he had no opportunity of contesting it. Senator McClellan did characterize Beck and English, and I don't know whether he mentioned Dorfman or not, but he did testify that it was of interest to the Committee to (388) know whether gifts were being sent to people of that character.

Mr. Kiernan: We won't press it, your Honor.

The Court: You could argue it, but I think the objection should be sustained to that. Now, what else was there?

(Further discussion off the record.)

Mr. Knachel: I would like to interpose a motion to quash the subpoena, your Honor, which was marked Government's Exhibit 9. Mr. Sheridan was under immunity. He would not testify before, and we had no opportunity before—in this court room for the first time we had an opportunity to develop that that subpoena was signed in blank and that thereafter Sheridan came to Cleveland and filled it in. Now, does that make a good subpoena?

The Court: Well, I guess it does with the Congress. It's different than in court.

Mr. Knachel: I point out, your Honor, this is the first opportunity I had to (389) raise that question because of his immunity.

The Court: No, I will admit that, Exhibit 9, and you may save your exception.

(Further discussion had off the record.)

Mr. Knachel: I offer all of the Defendant's Exhibits A to F, inclusive, in evidence, if the Court please.

The Court: All right, they may be received.

Mr. Kiernan: The Government re-offers the exhibits now that we have agreed should be admitted.

The Clerk: The exhibits that are now admitted are Government's Exhibits 3-A, 3-B, 3-C, 4, 5-A, 5-B, 5-C, 6, 9, 10, 12, 13, 14, 15, 16, 17, 18-A through D, 21, 22, 24, 29, 31, 32-A, 32-B, and Defendant's Exhibits A through F.

The Court: We are ready to go ahead, then. Is there anything that the jury ought to see? I don't see that there is anything necessary for them to see at this time.

Mr. Knachel: I just thought the key exhibits.

The Court: When you are arguing the case you can call their attention to them.

(390) Mr. Knachel: We would like to be heard on a matter of law.

The Court: What is it?

Mr. Knachel: A motion for a verdict of acquittal.

The Court: I will hear you briefly, but I have been thinking it over—

Mr. Knachel: May Mr. Cardinal say a few words, your Honor?

The Court: Oh, sure, if you want it in the record, to show that you made the motion.

Mr. Knachel: Yes.

The Court: I might say while it isn't the law, I know, but I have a feeling in a criminal case, which is a jury case, that the Court generally speaking has no more right to direct a verdict of acquittal because it believes there is insufficient evidence than it has to direct a verdict of guilty because it believes that the evidence beyond a reasonable doubt supports guilt. That's my own feeling about it, although I know it isn't the law.

Mr. Cardinal: Your Honor, the only thing about your statement that we want to at least for the record take exception to is **(391)** that there are only approximately 10 lines in this record which pertain to the alleged guilt of the Defendant, and they were the remarks of Mr. Sheridan that he went to the office and found a record which was intact and came back three days later and it was not intact.

The evidence of the Government is that the office in which this record was reposing during that time was available to a number of people in that building and, therefore, that evidence alone would raise nothing more than a suspicion upon which the jury could speculate as to the guilt of the Defendant.

Inasmuch as the Court has on approximately 50 occasions questioned the relevancy of the Government's evidence against the Defendant in this case, it would seem to us that the jury, not learned in the law, would have a great amount of difficulty and would be required to speculate upon a circumstance of suspicion.

We think that the obstruction of justice and the reasonableness of the inquiry of the Committee is seriously undermined by the fact (392) that the Government's case brought out that the evidence which they have contended they had was obtained on a blank subpoena issued to an investigator who filled that in in the field, and went beyond the practice that was then existing between the field office agents and the Teamsters Union here.

We think that under the circumstances the Court has not only the right but the duty, inasmuch as the man's liberty is at stake, to enter a judgment of acquittal.

The Court: What do you say about that, Mr. Kiernan?

(393) Mr. Kiernan: May it please the Court, I believe the Government made out a prima facie case on the first day.

We established the pertinency of the issue that the document was pertinent to the committee. We established the fact that it was destroyed. And through the testimony of Mr. Sheridan we established that the document was handed to the defendant in an unaltered state, that subsequently three or four days later it was obtained back from the defendant in an altered state.

Now without doing any more, the fact that the defendant had possession of the document and during the time that it was shown that he had possession the document became altered, that gives rise to a legal presumption that he is the one responsible for altering the document.

Now as a practical matter the Government didn't rest on the presumption, but we developed the case further in an effort to show that he would be the one who would have a motive for doing it and a purpose for doing it; that the other people who normally would have access to the document did not do it. We called the **(394)** associates of the defendant himself on the stand and each one of them testified that they did not do this act.

His own secretary testified that the document was in Mr. Presser's office, that that is where she saw it. Then, of course, at the time that he obtained the document there is an indication that it was a ruse. He said he wanted the documents to have them photostated. Of course, no photostats were ever made of them.

So I believe that there is no question at all but that the Government has sustained the burden of making out a case.

The Court: Well, it seems to me that it is a jury case, one for the jury's consideration.

The Government said at the outside that it didn't expect to establish its case by direct evidence alone, but relied upon circumstantial evidence. And the basis of the circumstantial evidence, of course, is just what happened in respect of the files when Sheridan, after the subpoena had been served, went to the office of Mr. Presser and the file **(395)** was at first given to Mr. Sheridan. But Mr. Presser said that he couldn't let him have it because he would photostat them, would give them to him after being photostated.

Now even the testimony of Mrs. Passalaqua was to the effect that when Mr. Presser took the file from Sheridan on the 9th of September, if that is the date he was there, that he, Mr. Presser, put it on the top of the television set in Mr. Presser's office where it remained, so far as she knew it was there, all the time. She hadn't put it back in its regular filing place, which was back of her desk.

And when Sheridan went again, the evidence is, according to his testimony and according to her testimony, Mr. Presser brought the file from the top of the television set and handed it to Sheridan in the condition that he found it.

Now Sheridan's testimony was that when he first had the file the invoice was intact and there also was a so-called Christmas List envelope containing a list of names of recipients for the champagne buckets.

Now on September 13th when Sheridan went back he was given the file by Mr. Presser and (396) not by somebody else. The names that were torn from the invoice and the list in the envelope marked Christmas List was not there where it had been before. Now what the Government relies upon is that nobody but Mr. Presser handled that file from the time Sheridan went there until he went back to get it, and that the reasonable inference to be drawn was if anything happened to it in the meantime it was Mr. Presser's explanation.

I think it is sufficient to go to the jury.

Mr. Knachel: May I be heard for just a minute?

The Court: Yes.

Mr. Knachel: I have been puzzled for a long time on how under these circumstances that there has been any obstruction of justice for this reason: Mr. Sheridan came here from Washington on instructions to check the relationship between Senator Bender and the Teamsters Union after Senator Bender had been appointed chairman of the anti-racketeering committee.

Now when he went to Mr. Presser's office (397) there was already in his office, which he concedes, the cancelled check from Rudolph Deutsch showing that these buckets had been paid for, the $824. When he went to Mr. Presser's office he made notes showing that Senator Bender's name was on that list.

The Court: Well, there were others, too.

Mr. Knachel: There were others, sure. Now he didn't have to come back to Mr. Presser's office.

The Court: You think his notes alone would have been adequate evidence?

Mr. Knachel: That is what I am saying. If he had gone to Rudolph Deutsch that same day, which is the source of the best evidence, certainly, they were the people that sold this thing, there would have been no obstruction of evidence, would there?

The Court: Yes. But I don't believe that you can excuse yourself that way by saying that the Government had other ways of finding out these matters.

Mr. Knachel: They had the way right that same day.

(398) The Court: No, the charge is that the defendant obstructed. They don't have to go and use other means where they are defeated by somebody who defaced or withheld information that was called for by a subpoena.

No, I don't believe that theory is of any value, Mr. Knachel. All right, we are ready to proceed.

The motion will be denied.

Mr. Kiernan: May it please the Court, I would like to talk to Mr. Knachel for a minute or two before the jury comes in.

(Counsel thereupon having conference.)

Mr. Kiernan: Could we see you in chambers for a minute?

The Court: What is that?

Mr. Kiernan: Could we see you in chambers for a minute?

The Court: Does it have to do with some matter?

Mr. Kiernan: Yes.

The Court: All right. We will be in recess for a minute.

(Short recess taken.)

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(399) DEFENSE.

The Court: All right, we are ready to proceed with the defense.

Mr. Knachel: The Defendant will take the stand, your Honor.

The Court: All right.

Thereupon the Defendant WILLIAM PRESSER offered himself as a witness on his own behalf, and being first duly sworn was examined and testified as follows:

DIRECT EXAMINATION OF WILLIAM PRESSER.

By Mr. Knachel:

Q. Mr. Presser, I would like to have you keep your voice up so that all the people can hear you back here. A. Yes, sir.

The Court: Yes, talk up so that all the jurors can hear you.

Q. Will you tell us your name, please? A. William Presser.

Q. Where do you live, sir? A. 2525 Claybourne Road, University Heights.

Q. How long have you lived there? (400) A. Approximately three years.

Q. Prior to that, where did you live? A. University Parkway, two streets over.

Q. For what period of time? A. Approximately four years.

Q. All right, sir. Are you a married man? A. Yes, I am.

Q. How many children do you have? A. Four.

Q. How long have you been married? A. Almost 35 years.

Q. Where did you go to school? A. In Cleveland.

Q. What schools? A. Elementary schools?

Q. Yes. A. Miles Standish, Empire, Glenville.

Q. Glenville is a high school? A. Yes.

Q. How far did you get in high school? A. Twelfth grade.

Q. Did you engage in any activities in high school? A. The sports that the school had.

Q. Football? A. Yes.

(401) Q. Did you graduate from high school? A. No, I did not.

Q. I believe—it's a little leading—but just before your graduation time you got married, is that right? A. Well, I left school before graduation and married shortly afterwards.

Q. You were 18 and your wife was 17? A. That's right.

Q. Now, what was your first employment in the Teamsters Union? A. I was President of Local 410, which was a vending service organization.

Q. How far back does that go? A. That goes back about nine and a half years.

Q. When did you first become President of the Joint Council? A. In January of 1953, I believe.

Q. And you were President of that, then, in 1953? A. Yes.

Q. I believe you succeeded John Rohrich? A. That's correct.

Q. And prior to that, of course, Edward Murphy was President of the Joint Council? A. Yes.

Q. Have you had any experience on picket lines? (402) A. About 34 years.

Q. And at the time you became President of Joint Council No. 41 what was its financial situation? A. It was bankrupt.

Q. Will you tell the Court and jury what its financial situation is today? A. It has over $100,000 in the bank, no outstanding bills other than current bills, it has a retirement fund with more than half a million dollars in it, it has an expanded credit union for the members of the various locals that in the year I took the presidency, I think their business was approximately a quarter of a million dollars that year and last year it exceeded three and a half million dollars in loans to rank and file members of our affiliated locals.

Q. Now, during the period of time that you have been president of the Joint Council, what have been the dues of the members? A. The average dues over the years—well, do you mean when I became President of the Joint Council?

Q. Yes, sir. A. Average dues was $3.00.

Q. What is the average dues now in 1960? A. $4.00, I would think, would be a fair average.

(403) Q. Do you have any hospitalization program for your members? A. Yes, we do.

Q. Will you tell us briefly what that is? A. Well, we have a number of health and welfare plans, as they are called, but each local carries a health and welfare plan for the rank and file covered under contract negotiations, and in conjunction with that we have the state organization plan, called a health and welfare plan, which picks up and covers a good many members—approximately 22,000 members—in the greater area of Ohio that are not covered under local plans. Incidentally, I am Chairman of the State plan.

Q. What areas does Joint Council 41 cover? A. Its jurisdiction extends from the City of Dayton down along the Ohio River to Steubenville, back across Youngstown, and up the Lake area to Lorain, inclusive of Cleveland.

Q. Are there other joint councils in Ohio? A. There are two others.

Q. What are their territories? A. One Council is located in Toledo, and I believe it has the seven counties surrounding the City of Toledo. (404) The second Council is located in Cincinnati and covers, I believe, three counties and goes over into West Virginia for one county, I believe. I'm not sure, but I think it is one county.

Q. So that there are three Councils in Ohio? A. Yes, there are.

(405) Q. How many union members are in Joint Council 41? A. Approximately 60,000.

Q. Do you have any official capacity with the Ohio Conference of Teamsters? A. I am the President of the Ohio Conference of Teamsters.

Q. Briefly what is the function of the Ohio Conference of Teamsters, your function with it? A. It is an organization composed of the affiliated Locals chartered under the Teamsters International in the State of Ohio. Its functions are to—well, one of its functions would be to maintain Division operations on area agreements, the area agreements other than those that are confined in Ohio in one Division.

Another Division maintains operations for area contracts confined within Ohio. There are several other types of contracts for given industries or fields which are covered under Divisions. Legislative would be one of its functions. It is a sort of clearinghouse for problems that might exist statewide in Ohio for Teamster Locals.

Q. How many teamsters are there in the State of Ohio in that Conference? A. We have approximately 85,000 in the Conference.

Q. Well now, with reference to Joint Council 41, what is your specific duty with reference to the problems of (406) labor contracts with management or the employers? A. You mean what are my functions?

Q. Yes. A. Well, as Chairman of the Council I am called upon to help negotiate contracts and to settle disputes, both internally among the Unions and with Management.

We handle correspondence and problems that exist between the International and the affiliated Locals of the Council.

Q. Well, by contracts, you mean you meet with Management and as a result of discussions you have a written contract for a period of years? A. Yes, that happens many times.

Q. And in connection with the Ohio Conference of Teamsters is that also done, that type of bargaining? A. Yes, if it is on an area basis.

Q. Well now, getting down to the matters involved here, had your predecessors in office, Mr. Murphy and Mr. Rohrich, sent out Christmas presents at Christmas time during their regime, during the time they were in office? A. When I took office that was the normal procedure as I was informed.

Q. I believe I neglected to ask you, Mr. Presser, where your business of Joint Council 41 is located in Cleveland. **(407)** A. 2070 East 22nd Street.

Q. Is that in a building? A. Yes, it is.

Q. Who owns that building? A. The inhabitants of the building, the Locals that live within that building.

Q. That would be the Locals own it? A. Yes. The membership of the Locals actually own the property.

Q. What was the status of that building when you came into office in 1953? A. It was a dilapidated building, badly run down. I think at that time we considered selling the property. We were offered, I believe, $75 or $85 or $1,000, something in that neighborhood and the mortgage was almost as great as the money we were offered for the property.

Q. Since you took office has it been remodeled? A. Yes, it has.

Q. Will you tell us briefly what relationship that remodeling had to the other Locals? A. Well, we have added 20-odd offices in the building, 3 large meeting halls, a small cafeteria type restaurant. We have remodeled, well, I'd say, most of the inside of the offices that were formerly dilapidated, the hallways. The entire building has been remodeled from top to bottom.

(408) Q. Do you happen to know what its present evaluation is? A. I would say approximately $375,000.

Q. What is the mortgage? A. A little less than a hundred thousand dollars, I believe.

(Article marked for the purposes of identification as Defendant's Exhibit G.)

Q. Coming back to the subject of Christmas presents, I hand you Defendant's Exhibit G and ask you to examine that and tell us what it is. A. The minutes of a meeting that took place on December 9, 1953, of the Executive Board of Joint Council 41.

Q. And from that date I would assume that that was just prior to the first Christmas you were in office, is that correct? A. That is correct.

Q. And would you read from those minutes the part thereof that has relationship with Christmas presents?

Mr. Kiernan: Objection, your Honor. I don't believe that these are the original minutes. They appear to be photostatic copies.

Mr. Knachel: Well, your Honor, the original of these minutes has never been returned from the House Committee in 1954.

The Court: Were they subpoenaed?

Mr. Knachel: They were subpoenaed by (409) the House Committee in '54 and these are photostats.

The Court: All right. You may proceed.

Mr. Knachel: I can bring Bond in to testify to that.

A. "Motion made, seconded and passed that the Chairman use his own discretion in dispensing Christmas gifts from the Council."

Q. And as a result of those minutes when you first came into office, have you been dispensing Christmas gifts since that time? A. Yes, I have.

Mr. Knachel: I offer this in evidence, if the Court please.

The Court: No objection.

Q. Well now, in Christmas—before Christmas of 1955 did you order some champagne buckets for your bosses and other people in political life? A. Yes, I did.

Q. And I believe there were eight of them, is that correct? A. I think that is the right number.

Q. All right. From whom did you order them? A. Charles Schaeffer.

Q. And Charles Schaeffer is a salesman for the Rudolph (410) Deutsch Company? A. Yes.

Q. Now you received those buckets, did you? A. Yes, I did.

Q. And they were paid for? A. Yes, they were.

Q. All right. Now handing you Government's Exhibit 12, which is an invoice of Rudolph Deutsch, do you recall receiving that invoice in December of 1955? A. No, I don't recall receiving it. I probably saw it at that time.

Q. You probably saw it? A. Yes, in the normal course of business all bills come to me at one time or another during each month. I assume that I saw this bill. I have no recollection of having seen it.

Q. All right. And if it was a bill you would give it to your secretary for payment? A. That's right.

(411) Q. Have you ever seen that invoice since it was paid in 1955 in any file in your office? A. I have no recollection of ever having seen one—or that one.

Q. Now, there was a time three years later, I believe, along in there, that a man by the name of Sheridan came to your office, is that correct? A. Yes.

Q. Could you recall when that was? A. June 9th—I mean September 9th.

Q. September 9th? A. Yes.

Q. Will you tell the jury what happened, what he said, what you said at the time he came in there that time? A. Well, it was in the morning, and I would think it was somewhere—oh, it must have been between 9:30 and 10:00.

Q. Will you keep your voice up, please? A. It was in the morning somewhere between 9:30 and 10:00. It could have been after 10:30. Mr. Sheridan came in and Mrs. Passalaqua called me out from my office and Mr. Sheridan had a subpoena with him, which he handed to me. I read the subpoena, and it called for various items, property of the Joint Council and I asked Mr. Sheridan to follow the normal (412) procedure which we had been operating under with the various committees and departments of the Government that were constantly asking for various records of the Joint Council. He agreed, and I called our Certified Public Accountant's office and asked for Mr. Cozza. I believe I was told he was out of town. I couldn't reach Miss Steuer because she wasn't in the office either. So I believe at that point we had a conversation in reference to Sheridan going through the files. My position was that following the usual and accepted practice we had with the various Government agencies, that Mr. Sheridan should wait until the firm that we had employed to take care of our books and records could give Mr. Sheridan what he required. Mr. Sheridan was very insistent that he go through the files then and there, and he waved the subpoena at me, stating that he was an employee or an officer of the Government and the Committee, and rather than get into an argument that would solve nothing, in my opinion, at that time, I said to Mr. Sheridan, "If you are that insistent we will open the files to you."

I instructed Mrs. Passalaqua to permit Mr. Sheridan to go through our files and records. (413) Mr. Sheridan—all the drawers were opened on the filing cabinet, and Mr. Sheridan, I believe, was on his knees working on the bottom drawer for approximately 15 or 20 minutes, perhaps a half hour, and I then said—well, I came out of my office and saw him on his knees there and I said to him, "If you are going to stay here and go through these files, you might as well be comfortable. So we arranged to put a—I believe it was a typewriter table that opened up on each side which gave him sufficient room to work from, and a chair that had rolls on it so that he could roll back and forth from the cabinet to this table he was working on. He thanked me for the consideration, and I walked back, I believe, into my office, or I may have walked out of the office. I don't remember. Mr. Sheridan went about his work.

It was some time around the noon hour when I asked Mr. Sheridan if he wouldn't like to have lunch, that we had a cafeteria or small restaurant downstairs, and his answer was that he didn't think it was appropriate, but thanked me.

Q. Keep your voice up. A. He thanked me for asking to have lunch. Mrs. Passalaqua, I believe, had just left for lunch or was (414) just leaving for lunch at that time.

I went back into my office, and Mr. Sheridan continued looking at the files for a short time, and I believe he also left the building and went to lunch too.

I don't think I was in my office, or in the secretary's office, when Mr. Sheridan returned. I have no recollection of how he returned or when he returned. He was there during the afternoon, because on my return from wherever I had gone he was busy working at this small table, and continued working up until a few minutes after 4:00, when Mrs. Passalaqua was getting ready to go home.

Mrs. Passalaqua called me and I came out and asked Mr. Sheridan how we would handle the matter of closing the office, because Mrs. Passalaqua was going home, and I was going to leave soon afterward. He said he was nearly through, it would only be a couple more minutes, or a few more minutes, something to that extent, and he did finish quite soon afterwards.

Q. Well, at the time he finished who were in the room, you and Mr. Sheridan? A. And Mrs. Passalaqua.

Q. She was still there? (415) A. Yes, she was still there.

Q. All right. A. Mr. Sheridan had compiled some data that he wanted to take with him, and I said to him that was agreeable for him to take this data, however I wanted him to follow the normal procedure and give me a receipt for it, for whatever he wanted to take. He said it was quite late in the day and he would have to itemize or list what he was going to take, and at that point I don't remember whether I said to Mr. Sheridan "Let's have it photostated," or whether he suggested to me that we photostat this material. One thing I am sure of, the material was available to Mr. Sheridan if he would have given me a receipt for it, and I asked him to give me a receipt.

I don't remember whether Mrs. Passalaqua was there during the entire conversation or not, because we got into a few words back and forth at that point. We weren't angry, but we probably both became a little loud.

Mr. Sheridan finally agreed to leave the material there, or whatever he had put in the pamphlets or folders, and I said to Mr. Sheridan, "I am leaving town ~~and I~~ won't be back for three or four days so I will have to leave the photostating to someone in (416) the office."

His answer was that he wasn't in a hurry for whatever material he had, and that upon my return to please call him so he could come over and get the material, or the photostated material, and with that Mr. Sheridan left.

The only other incident that I recall occurring during the day was sometime in the morning, or in the late morning, Mrs. Passalaqua motioned to me to come into her office and made a motion toward Mr. Sheridan, pointing to his inside pocket. I walked over to Mr. Sheridan and I asked him how he was getting along and he said, "Fine." I don't think there was more than a very few words spoken, and I returned to my office.

Q. Well, did he leave first or did you? A. No, Mr. Sheridan left first.

Q. And he left the files? A. Yes.

Q. How were they packaged at that time? A. Well, the file—when he left the file was on the left-hand corner of Mrs. Passalaqua's desk.

Q. Well, describe it more particularly. I mean was it a series of files, was it one or four, or what was it? A. I didn't pay that much attention to the files. I (417) don't know if it was one, two or three.

Q. Were they in folders? A. They were in a folder.

Q. How many folders? A. I don't know. I have no recollection.

Q. What did you do with those files? A. I took them off of Mrs. Passalaqua's desk and placed them on the television set in my office.

Q. On top of it? A. Yes, sir.

Q. Did you leave any instructions for photostating? A. Yes, I did.

Q. With whom? A. One of the agents of the Council.

Q. Who it that? A. Mr. George Scheck.

(418) Q. All right. Did you leave town then? A. I left town on the 9th.

Q. Where did you go? A. I went to Washington.

Q. And when did you return from Washington? A. On a Friday, I believe it was the 12th.

Q. Now from the time you left on the 9th until you returned on the 12th, did you have any—was there any conversations about these photostats? A. It was either the 10th or the 11th, and I am not sure whether I called the office or the office called me, Mrs. Passalaqua informed me that Mr. Sheridan had called and wanted the files or a photostat of the files and was quite insistent that he get them. He was now in a hurry or he needed them.

And I told Mrs. Passalaqua to call Mr. Sheridan and inform him that if he wanted the files they were on my television set, he could come over and get them, but to make sure that she had a receipt for whatever he took.

At that time she also informed me that the files had not left the television set, had not been taken to be photostated, and it was then I told her to call Mr. Sheridan.

Q. You came back to Cleveland? A. Yes.

(419) Q. When is your first contact with Mr. Sheridan upon your return to Cleveland? A. I came back to the office in the early afternoon on a Friday, I believe it was the 12th, and one of the first things I instructed Mrs. Passalaqua to do was to call Mr. Sheridan.

Well, I have left out part of what happened in the conversation. Mr. Sheridan, I understand, informed Mrs. Passalaqua that he would wait until I returned before picking up the files. So upon my return I had Mrs. Passalaqua call Mr. Sheridan to let him know that I was back, he could come over whenever it was convient for him.

Q. All right. Then did you receive information as to when he would come? A. I believe Mrs. Passalaqua told me that Mr. Sheridan was not in town, that someone at the offices that he habitated said he was not in town and upon his return he would call.

Q. Did he call? A. I have no recollection whether he called or not.

Q. All right. Now when did you next see him? A. On the following day, on a Saturday.

Q. All right. Tell the jury what happened on that day? Tell us about what time he came in and what happened between you two. **(420)** I believe it was around the noon hour Mr. Sheridan—well, there was a knock on the door. There is no way of seeing from my office or from Mrs. Passalaqua's office who was out in the hallway.

Q. While we are on that point, do you have a little hole up there where the people can see through in the doorway of the hall that comes into Mrs. Passalaqua's office? A. Well, at some time prior to my taking office someone had built a window about 14 or 16 inches square into the door. We had never in the entire time I have been there used this window. It has a wooden door behind it that would block off the view either in or out.

Q. At that time was there a hole in there that somebody could see through, see who is on the outside, a round hole in that door? A. I think there was a hole behind the window.

Q. Behind the window? A. Or cut into the wood of the door.

Q. Well now, if I am wrong correct me, do I understand that you have a buzzer system? A. Yes, we do.

Q. And the buzzer indicates that somebody is in the hall seeking admittance, is that right? A. Well, the buzzer wouldn't indicate it. There is usually a knock on the door and we can hear it. You can hear it **(421)** in my office. If I can hear it I am sure Mrs. Passalaqua can hear it.

Q. I see. Someone knocks on the door and the buzzer lets them in? A. That's right.

Q. And do you have a place to press that buzzer in your office? A. Yes.

Q. And does Mrs. Passalaqua have a place in her office to press that buzzer? A. Yes.

Q. Now can either one of you determine who was on the outside? A. No.

Q. Is that the way you have been running your business all these years? A. Yes.

Q. So that anyone who wants to come in, you press the buzzer and let them in? A. That is right, unless the door happens to be open and many times it is left open.

Q. I see. I assume that is so you could see anybody that wants to do business with you, is that correct? A. That is right.

Q. All right. He came on Saturday around noon, is that **(422)** correct? A. That is correct.

Q. Will you go on from there? A. Well, Mr. Sheridan came in. I pressed the buzzer and then there being no answer—I said, "Who is there," which I normally do if they don't immediately come into my office. If he did answer I didn't hear him.

I walked out into the smaller office, Mrs. Passalaqua's office, and Mr. Sheridan was there and he asked for the file. He was very nice about it, very polite.

I went back into my office. All I had to do was just step right around the corner of the door, and I picked up the file and brought it out and handed it to Mr. Sheridan. He walked over to Mrs. Pasalaqua's desk. I don't remember whether he sat down or not. I walked back into my office.

I didn't pay any attention, but I assume he was going through the file. It couldn't have been more than perhaps a minute or so when he turned and in a loud voice began accusing me or someone of the Teamsters for having destroyed—I think that was the word he used—a piece of paper. He became quite angry about it and I tried to talk to him from the distance between where he was standing by Mrs. Passalaqua's desk and my desk.

(423) I tried to ask him, "Well, what are you so angry about? What is causing all this furor?"

With that I got up from my desk, came around, because I have to walk around it to get to the doorway, and was attempting to talk to Mr. Sheridan all the time I was walking toward the door.

He said something about not trusting anyone ever again as long as he lived. He made some remark about Teamsters and their jobs.

By that time I had reached the little office and again I said to Mr. Sheridan, "What is it you are so angry about?"

Of course, by that time my temper was going up pretty good, and his was way up. He took the file or this package of papers he had and turned around and walked right out of the office with the entire file with whatever he had in it, and that was the last I saw of Mr. Sheridan.

Of course I was so angry I forgot to ask for a receipt, so I don't know what was in the file. I never saw what was in the file. And until this very day I don't know nor do I have a receipt to show what he took.

Q. Handing you Government's Exhibit 12, which is an invoice of Rudolph Deutsch Industrial Sales Company, did you ever see that invoice in 1958? **(424)** A. Yes, I did.

Q. Where? A. When I was before the McClellan Committee.

The Court: I didn't hear that.

The Witness: When I was before the McClellan Committee.

Q. But I mean since the time this bill was paid up until the time Mr. Sheridan was there, did you ever see this invoice? A. I have no recollection of ever having seen that invoice during that period of time.

Q. And from the time Mr. Sheridan came into your office until the time he finally left several days later, did you ever see this invoice? A. No, I did not.

Q. Did you ever at any time since 1955 tear this invoice? A. No, I did not.

Q. Did you ever make any erasures on it? A. No, I did not.

Q. Did you send out Christmas presents in 1956? Did you send out Christmas presents the year after these buckets were sent out to people? A. Yes, we did.

Q. And did you send them out in the years following that? A. Yes, we have.

(425) Q. You send out Christmas presents, then, each year? A. We do. That is our practice.

Q. I see. And that was the practice before you were President? A. That is correct.

Q. Do you give a Christmas present to your secretary? A. I most certainly do.

Q. And are Christmas presents given to the employees of the building? A. They certainly are.

Q. After an invoice of any kind is paid, do you have any official or any other kind of a reason for seeing it again? A. No, I do not.

Q. Now I want to direct your attention to the time that Mr. Sheridan was there on the first occasion and on the second occasion. I know we have gone into this somewhat, but tell us what your office arrangement was there. I mean, where was your secretary, where was the door, where was her office? A. Well, the physical aspects of the office would be hard to describe. There was a small alcove in the hallway with a sign protruding marked "Joint Council 41."

You had to walk through a chrome gate into this small alcove and turn to the right to face the door.

(426) Once having come into the office, Mrs. Passalaqua's desk was placed against the outside wall lengthwise in a position that was almost in a straight line with the doorway going into my office. Mrs. Passalaqua sitting behind that desk could observe me practically at all times as long as I was behind my desk.

Behind her were or was, I believe, one or two filing cabinets, the telephone and the office equipment that she used daily.

On the other side of the wall is a small drinking fountain, and I believe there was a small cabinet, storage cabinet of some kind that she kept her typewriter and stuff locked up at night in.

Then there was the door leading to my office which is a much larger office. My office is a square room or was a square room.

(427) Q. When you say "was," I want to interrupt

you there. That office, or those offices, have been remodeled since 1958, is that correct? A. Yes, it was remodeled about a year ago after a flood ruined the entire office, that is, ruined my office and Aida's office.

Q. They are remodeled now, but you are describing how they were when Mr. Sheridan was there? A. That's right.

Q. All right. A. Coming into my office, on the wall adjoining Aida's office was a closet which we used as a storage closet for her office supplies, papers, envelopes, letterheads, various seals, and all the material that she couldn't possibly keep in her own office because there were no facilities for storing anything in her office. There were no closets or places of such a nature. And then in addition we hung our hats and coats or rubbers, whatever we used, whatever the weather might be, also in this same closet. Cater-corner to this door was a door leading into a small hallway which led into a series of offices that extended down the length of the building.

Q. That would be to the west of your office? A. No, it would be to the south.

(428) Q. Well, as you sit at your desk it would be sort of to your right, would it? A. Yes, it would be to the extreme corner of the right end of the office.

Q. How many offices were down there? A. I believe 6 or 7.

Q. And who were they occupied by? A. By various locals in the Teamsters.

Q. By various locals? A. Yes.

Q. Then— A. Incidentally, there was one other door in my office, and that led into a washroom.

Q. Now, was there a door between your office and these offices that went down to the various locals? A. Yes.

Q. And after your door was opened, did each one of these locals have their own door or was it open all the way down? A. Well, each office has a door. My door, the door leading into my office was always open. You couldn't lock it if you wanted to.

Q. Well, in the course of your business, did these men from these various locals down the hallway come (429) in to see you? A. They many times came in from the inside door into my office.

Q. To discuss problems of the unions? A. Many times, and many other problems. Normally, in the course of a business day, the office that Mrs. Passalaqua habitated, being small—there was only four chairs for people to sit in—it was usually filled with people waiting to come in to see me. After a short time the agents learned it would be easier to come through the other offices into my office to arrange to see me that way, rather than to come into Aida's office and wait there, or stand in the hallway waiting for their turn.

Q. That would be on business days? A. Yes.

Q. What did you do on Saturday? Did you have a full business day, or what? A. I traveled quite a bit, and Saturday was the day I set aside for answering letters, picking up my mail, taking care of whatever personal matters I might have for that weekend. Then around the noon hour, or soon afterwards, we sort of had free time on our hands, and the agents would come over, friends would come in and we would sit around and just talk there, (430) pass the time of day, for an hour or two until we all left.

Q. By the way, when you were traveling, how did you handle your weekly payroll, that is, the checks for your weekly payroll? A. Well, since I have taken office it has been my policy, and still is my policy today, to always leave as many checks as the office secretary feels is necessary with my signature on it to be filled out at a later date, or at any time when it is necessary for payroll or to pay bills if I am not present.

Q. Those checks require two signatures, is that right? A. Yes, they do.

Q. What is the other name? A. Charles Cimino.

Q. And he is what? A. The Financial Secretary of Joint Council 41.

Q. Are there times when Mrs. Passalaqua signs for you? A. There may have been a few times. She has the authority to sign them should there be an emergency, and I say there may have been a few times, and I'm now guessing. I know of no single instance at this moment.

Q. Well, does she sign your mail sometimes too? A. Yes, she has the authority to sign my name to letters.

(431) Q. Well now, can you tell us, Mr. Presser, as of this period when Mr. Sheridan was there on both occasions, what people had access to your offices? A. How do you mean had access to the office?

Q. Well— A. You mean that could come int the office by knocking on the door?

Q. No, who had keys? A. Well, that's a pretty long list.

The Witness: Your Honor. is it all right if I read something?

The Court: He wants to know who they are.

Mr. Knachel: Yes.

Mr. Kiernan: May it please the Court, the Defendant is going to read from a paper. The Government requests permission to examine the paper first.

The Court: He is reading the names, that's all. Do you want to see the names first?

Mr. Kiernan: Yes. please, your Honor.

The Court: Well, you can look at it.

(Thereupon the document was examined by Mr. Kiernan.)

(432) Mr. Kiernan: May it please the Court, before an attempt is made to read a document like this into the record—

Mr. Knachel: I'm not reading it into the record.

The Court: He is only reading names, is all. That's what I understood the question was. He asked who had keys to the office.

Mr. Knachel: I will ask it from memory, then.

Q. So far as your memory serves you. A. Well, as far as my memory serves me, I have a key, Mrs. Passalaqua has a key, Mr. Passalaqua and Mr. Scheck, Business Agents have keys, the postmen who deliver our mail have keys; I believe the night watchman has a key, the day custodian has a key, the night custodian and his assistant have keys, the charwomen and the cleaners have keys, the building committee, composed of three agents have keys, the towel man has a key. I don't know who all else may have keys.

Q. Now, outside of those— A. I know this, that approximately a year or a year and a half ago there were so many keys out to this (433) building, and so many of the master keys that would fit all of the doors that I am now talking about—the names I mentioned all carry master keys—that it was necessary for us to call a locksmith in and spend in excess of a thousand dollars to have tumblers changed throughout the entire building, because we ourselves lost track of who had keys, with tenants moving, and people leaving, no longer employed any more, new men coming in. It constituted a constant problem, of who carried keys.

Q. Now, was your office ever used during this September period, or was it accessible to business agents of these locals for use? A. Yes, it was, and always has been and always will be as long as I am there.

Q. When you are out of town, of course, you don't know. A. No, but I do know it is a common practice for the business agents who normally use the upstairs offices to use my office, with my permission. They have that permission when I am not in town. It is not a glorified, gilded castle, that office. It is a very pretty office, but it is used for business.

Mr. Knachel: You may cross-examine.

(434)

Cross Examination of William Presser.

By Mr. Kiernan:

Q. Mr. Presser, first directing your attention to the week of September 9th through the 13th, your testimony was that you were there on the 9th when Walter Sheridan went to the office, is that correct, sir? A. Yes.

Q. And then you left town? A. That is right.

Q. Did you leave town the evening of the 9th? A. Yes.

Q. And where did you go, sir? A. To Washington.

Q. Was it on Joint Council business? A. My recollection is it was not. I don't believe so.

Q. Or was it on Ohio Conference business? A. It may have been.

Q. Could you probe your memory a little more, Mr. Presser? A. Well, I have thought about it considerably, and it was either Conference business or area contract business.

Q. And that would be either Joint Council— A. No, it wouldn't be Joint Council. That would be either Conference or the area, which is the central states area.

(435) Q. So this would either have been central states or for the Ohio Conference of Teamsters, is that correct? A. That is correct.

Q. Do you know whether there was any record existing in either the Ohio Conference of Teamsters or the central states which would reflect the fact that you made that trip? A. Yes, there would be such a record.

Q. Could you state what type of record it would be? A. The form that I used on my trips, on which I designate what cities I have been to and what days I have been there.

Q. Before you took the stand today you felt it was a matter of some pertinence to know whether you were in town during that period of time or not, did you not, Mr. Presser? A. Yes, I did.

Q. And did you make any effort to locate the records of the Ohio Conference or the central states which would reflect this trip? A. Yes, I did.

Mr. Kiernan: Could we see them, please?

Mr. Knachel: I have them here, but I am having a hard time finding them.

(436) Q. Well, to continue, Mr. Presser, you left here on the evening of the 9th. How did you go to Washington? A. I drove to Washington.

Q. Is that the normal way that you go? A. I drive many times when I have the opportunity to.

Q. It was a pleasant ride? A. It's too long ago to remember whether it was pleasant or not.

Q. And Sheridan left your office at approximately 4:30, you say? A. I would say a little after 4:00.

Q. A little after 4:00, 4:30. Do you recall what you did after that? A. I left a very few minutes after Mr. Sheridan left.

Q. And you had eaten lunch around 12:00? A. I wouldn't remember the exact time, it was in the noon hour.

Q. Sometime around the noon hour? A. Yes.

Q. You had been in the office all day working, is that correct, sir? A. I have no recollection of having been in the office all day. I could have been in and out of the office several times during that day.

Q. But you were engaged in the performance of your job (437) during the course of the day? A. Yes.

Q. And back and forth to the office, at least? A. That's right.

Q. You were there when Sheridan came, you were certainly there at noon time, and you testified you were there about a half hour after he came, at some time around 10:00 or 11:00, when you finally gave him a chair? A. Yes.

(438) Q. Then you were there sometime after noon when Mrs. Passalaqua motioned you to come in and when you went in and asked Sheridan how things were going? A. No. I said that this incident happened prior to the lunch hour.

Q. Sometime prior to lunch. Well, you were there for most of the morning anyway, is that right? A. Yes.

Q. And you don't recall how much of the afternoon? A. Well, I was in and out, I would say, all afternoon.

Q. Now after you left the offices of Joint Council 41 at 4:30 that afternoon, where did you go? A. I didn't say I left at 4:30. I said I left shortly after 4 o'clock.

Q. Well, shortly after 4 o'clock, where did you go then, sir? A. I have no recollection of where I went then.

Q. How long had you known that you were going to be going to Washington? A. Well, that is a question I can't answer. I don't know.

Q. Was it something you knew before? A. It probably was, but I can't recollect now whether it was or how long I knew.

Q. Were you prepared for the trip? A. I carry a bag in my car at all times. I am prepared to travel constantly.

(439) Q. So you could be ready to go at any moment? A. That's right.

Q. Now when you got to Washington—what time did you leave here, approximately? A. I have no recollection as to the hour. It was late in the day.

Q. About how long would it take to drive to Washington, sir? A. Normally it takes me around 7, 7½ hours.

Q. You usually travel by yourself? A. Sometimes.

Q. Well, what is the normal thing, sir? A. Sometimes I travel by myself and sometimes I travel with other people.

Q. Well, was there— A. Sometimes I take a train, sometimes I use a plane.

Q. Do you ever have occasion to take one of your business agents with you? A. You mean when I am on the road?

Q. Yes. A. Yes, I do.

Q. Is there any particular agent who you usually take? A. The last couple of years Mr. Passalaqua. Prior to that, no.

Q. Well, have you ever taken George Scheck with you on a trip to Washington? **(440)** A. Yes—I don't believe so.

Q. Are you positive that you do not? A. I said I don't believe so.

Q. You don't recall? A. I don't recall.

Q. Did he accompany you on this particular trip? A. No.

Q. Now you got to Washington, we will assume, sometime around midnight, is that correct, sir? A. I am not sure what time I got there. It was late, it was very late when I got there or early morning.

Q. Could you give the jury any idea what time you left here? A. It was late, very late in the afternoon when I pulled out of Cleveland.

Q. Well, it certainly was some time after 4 o'clock? A. Yes, it was.

Q. Did you go home and eat? A. No, I didn't.

Q. Did you eat in a restaurant? A. I must have eaten on the highway. I believe I did.

Q. Did you wash up any place, change clothes or anything else? A. No.

Q. Just hopped in the car and took off? A. That is right.

(441) Q. Well, would it be fair to say that you may have left around 5 o'clock? A. It could be.

Q. And it would at least be midnight or sometime after that when you hit Washington? A. Yes.

Q. Now where did you go when you got to Washington, sir? A. I went to the Woodner Hotel.

Q. Did you check in under your own name? A. No, I did not.

Q. Well, whose name did you check in under? A. I didn't check in under any name. I stayed in one of the rooms of the suite that the International keeps at the Woodner.

Q. Is that your usual practice? A. If they have no rooms available, or if there is a room available in the suite, I would stay there.

Q. Well, is there anyone else from the International who lives at the Woodner Hotel? A. Yes.

Q. Could you state who it would be? A. A Mr. Hoffa and a number of other people that belong to the International.

Q. That is James R. Hoffa? A. That is right.

(442) Q. Well, was it at his room that you stayed? A. I stayed in the same suite that he stays at.

Q. Well, is there a common entrance to a suite and a room registered in his name? A. I don't know how it is registered. I can't tell you that.

Q. You have no idea at all. Do you recall whether or not Mr. Hoffa was there when you made that visit? A. I believe he was.

Q. Did he have anything to do with the purpose of your visit? A. I would assume so.

Q. Well, could you say whether he did? A. Well, it is so long ago I don't remember all the pertinent things I took up with Mr. Hoffa the following day or two.

Q. Well, it is something— A. But it would have been something pertaining to the Teamsters International movement.

Q. It is something you had been thinking about for some time, Mr. Presser, was it not? A. I don't know if I was thinking about it. It was a problem or problems that had to be taken care of and I went up to see that they were resolved.

Q. Well, the fact that you made that visit is something you (443) must have been thinking about for some time? A. I don't understand your question. Had I planned it?

Q. No, sir. Have you reflected upon it? A. Having made the trip?

Q. Yes. A. Yes, I have reflected upon it.

Q. Well, would you reflect upon it now, sir, and tell us what that trip was all about? A. I have no recollection as to the many things I took up. I have made so many trips before and afterward that it would be impossible at this point to say exactly what I talked about with Mr. Hoffa or whoever else I had to see.

Q. You mean to say you made a business trip to Washington—how long were you there? A. I believe two days or two and a half days.

Q. Two or two and half days. That is you were there the night of the 9th, you were there all day the 10th, all day the 11th, is that correct, sir? A. If my memory serves me correctly I think that is right.

Q. And you returned to Cleveland when? A. I got back into Cleveland around 1:30 or 2 o'clock on a Friday.

Q. That would be a. m. Friday, in the morning or in the afternoon? **(444)** A. In the afternoon.

Q. So then you were in Washington Wednesday, Thursday, Friday and you left here Monday night. And can you remember exactly the time that you went? A. No, I don't remember exactly the time. I said approximately.

Q. Well, precisely—fairly and closely? A. Not precisely and closely.

Q. You said you got there about midnight or early in the morning? A. I can't hear your questioning. If you will stop shouting I will listen to you.

The Court: Yes. Don't raise your voice. How material is this what he did down in Washington? I mean, what does it have to do with our matters?

Mr. Kiernan: I believe it is a matter of importance, your Honor.

Mr. Knachel: Well, I object to it.

The Court: Go ahead.

Q. When you are in Washington on Teamster business, Mr. Presser, do you have available to you any offices? A. You mean at the International Building?

Q. Yes. **(445)** A. No.

Q. Well, do you normally go to the International Building? A. Yes.

Q. Did you on this particular trip? A. I believe I was there that day and the following day.

Q. And who did you talk to when you were there? A. I talked to everyone I saw.

Q. Well, who did you see? A. I saw Mr. Hoffa, Mr. English, because I always stop in to say hello to both of them no matter who I have to see, and probably several other people that I would run into. But for me to say who I saw would be impossible at this moment.

Q. But you can say that you saw Mr. English and Mr. Hoffa. And did you mention anybody else? A. And several other people.

Q. By name you can't think of anybody else? A. No. And my basis for saying Mr. Hoffa and Mr. English is that whenever I go to the International Building on whatever business I may go there for, I make it a practice to say hello if they are in to both of my bosses.

Q. If they are in, it would be a matter of courtesy if nothing else? A. That is right.

(446) Q. But that doesn't necessarily mean, sir, that you were there on business which directly concerned Mr. Hoffa? A. On this particular trip?

Q. Yes. A. I can't say. I don't remember exactly what my business was at that time.

Q. Did you stay at the Woodner Hotel, sir, during the entire period of time that you were in Washington? A. Are you referring to these two days?

Q. Yes. A. If my recollection is correct I believe I did.

Q. And the suite you stayed at is charged to the International? A. I don't know. I said I did not know how it was registered.

Q. Well, you knew enough to get there? A. I certainly do.

Q. You have no idea who pays for it? A. I have never inquired.

Q. Well, did you make any effort to pay your portion of the expense? A. No, I did not.

Q. You have no idea at all where the money is coming from that paid for your stop there?

Mr. Knachel: Objection.

(447) The Court: Yes. Wholly irrelevant. Objection sustained.

Mr. Kiernan: May it please the Court—

The Court: What does it have to do with the issues here?

Mr. Kiernan: If the defendant, as he testified, was in Washington—

The Court: Who he saw or where he stayed.

Mr. Kiernan: We are interested in determining what independent record there might be other than a self-serving one to show that he actually made that trip.

Mr. Knachel: Well, all he wanted to show was that he met—

The Court: Well, the issue is whether Mr. Presser was at his office here in Cleveland on the days that Sheridan called, and he said he was. He was here on the 9th and saw Sheridan and was here on the 13th and saw Sheridan.

The Witness: Yes, I did.

The Court: He testified so far as he knows the files were on top of his **(448)** television set all of that time. It is all right to ask when he went away and when he came back, but as to the details of what he said and who he saw, I think that is wholly irrelevant.

Mr. Kiernan: May it please the Court, the Government believes there is at least some pertinency as to whether or not Mr. Presser was in Cleveland or in his office on the days intervening between the time of Sheridan's initial visit and his second one.

The Court: That is proper, all right. You doubt —or, rather, claim that he was here all the time and didn't go to Washington. That is your position.

Mr. Kiernan: That is right.

The Court: It is pretty hard to prove through this witness that he didn't go.

Mr. Kiernan: Well, your Honor, I am trying to develop through that particular line of cross examination where he might have gone, that there might be a permanent record.

The Court: If you got every detail **(449)** of what he said, what he did on those days, how would that help you in showing that he was in Cleveland rather than Washington?

Mr. Kiernan: We could subpoena the records of the hotel, your Honor.

Mr. Knachel: Well, you have about 15 times.

The Witness: They have subpoenaed my records 101 times over there.

The Court: Well, let's continue. Let's hurry and conclude. Is there anything more you want on that line?

Mr. Kiernan: No, I won't press that line of inquiry any further.

By Mr. Kiernan:

Q. Now, Mr. Presser, at the start of your testimony you gave the jury some idea of your background as a labor leader, and I believe you testified that your first relationship with the Teamsters came when you became President of Local 410, is that correct, sir? A. That's right.

Q. You were not even a Teamster before that and all of a sudden you were a president of a local? A. I didn't say that.

Q. Well, was it your first contact with the Teamsters, sir? (450) A. Yes.

Q. And you did become President of the Local? A. Yes, I did.

Q. There is an explanation for that, is there not, sir? A. Yes, there is.

Q. You are the one who got the charter for that particular Local, is that not correct? A. No one person can get a charter.

Q. Are you the person who arranged to get the charter? A. It is too long ago, I don't think I was, anyway.

Q. Well, would it refresh your recollection if the Government could produce a letter with your name on it either addressed to you or written to you having to do with the obtaining of the charter, sir? A. It certainly would refresh my memory.

Q. You have no personal recollection of that?

Mr. Knachel: What charter are we talking about?

Mr. Kiernan: For Local 410.

A. Now if you are asking me did I play a part in getting a Teamsters charter at its inception—

Q. Yes. A. My answer would be yes.

The Court: That is Local 410?

Mr. Kiernan: Local 410.

(451) Q. Now before the time that you played this part in getting the charter for Local 410, immediately preceding that, were you a labor leader of some type? A. Yes, I was.

Q. Immediately preceding? A. Yes.

Q. Up until the very date that you went with 410 you were a labor leader? A. That I am not sure of. I am not sure of the date.

Q. Well, do you recall what particular union or local or organization it was that you were with before you got this charter or before this charter was obtained? A. Oh, I was with Local 442 of the International Brotherhood of Electrical Workers.

Q. How long had you been with that organization, sir? A. I'd say approximately 17 years.

Q. Did you have anything to do with setting up that organization? A. Yes, I did.

Q. And you remained with it up until the time you went with 410, is that correct, sir? A. Oh, there was a period of time which I was not with 442.

Q. Where were you during that period of time, sir? A. During that period of time I had resigned and had gone into business for myself.

(452) Q. Was that the first time you had gone into business? A. You mean throughout my life?

Q. No, sir, during that period of time. A. I think it was.

Q. You were not in business at the same time that you were a union executive, is that right? A. I don't believe so.

Q. Now what business was it that you went into when you resigned from Local 442? A. The distribution of automatic coin operated equipment.

Q. Did you have a company? A. I was interested as a stockholder in a company.

Q. And did the company have a name? A. Yes.

Q. Do you recall what it was, sir? A. It is a bad memory, I lost all my money. I can't remember the name.

Q. Well, was it something like Triangle or Tri-State, a name something of that type? A. No, it wasn't Triangle. I don't believe it was Tri-State.

Q. Who was associated in the company with you? A. A Mr. Dixon and, I believe, one other gentleman whose name slips me at the moment.

Q. What again was the nature of the business of this company? A. Automatic coin operated equipment.

(453) Q. Now exactly what is the automatic coin operated equipment that you were interested in that you referred to? A. We were wholesalers selling to operators in several states music boxes, various types of amusement game devices.

Q. Do you recall what franchise if any that you had on the music boxes? A. I think it was an Areon.

Q. Does the Windsor Phonograph Company mean anything to you, sir? A. Yes, it does.

Q. What company was that, do you recall? A. That was a wholesale company selling phonograph equipment and coin operated amusement devices.

Q. Were there two companies doing the exact same thing, or is that the company that you have been talking about? A. Are you talking about Cleveland now?

Q. Well, Ohio, sir. A. This particular company that you are talking about was confined in the local area of Cleveland. Windsor Phonograph, I think that was the name.

Q. And the other company engaged in the same type of business? A. Yes, but away from Ohio.

(454) Q. Now in addition to the sale of— A. Pardon me. The man's name was Nichols or McNichols, something like that. McNichols, I believe.

(455) Q. And he was also a co-owner with you and Nixon, is that right, or Dixon? A. The way it worked out, he was the owner.

Q. Now, that company was not engaged in the operation of machines, was it, sir? A. I have no recollection of having operated machines.

Q. Have you any recollection of having had any company which was engaged in the operation of juke boxes? A. I don't believe that we operated equipment.

Q. You say you don't believe. Do you know whether you did or not? A. I am not sure.

Q. Was it a matter of interest to you, sir, whether you would or not? A. Well, normally, I believe at that time it would be.

Q. Yes, sir, and you did have some other interests in the juke box field, did you not? A. I don't remember any other interests in the juke box field.

Q. There was Local 442. A. I wasn't with Local 442.

Q. Well, immediately prior to that time you were, sir. A. Certainly.

Q. I mean you have some— A. I resigned because I felt, even though there were no (456) laws at that time, that there might be a conflict of interest on my part to represent the local union and be in business in a similar field, and I voluntarily resigned.

Q. And you gave up your position completely? A. That is right.

Q. Did you find any other employment at that time? A. I was in business. That was my employment.

Q. Other than being in business, sir, did you find any other employment? A. What kind of employment?

Q. Well, was there any sort of operators' association? A. There may have been at a later date.

Q. When you resigned from the union, did you go into any relationship with the operators' association? A. What operators' association?

Q. Well, you said there may have been one. Was there one? A. Well, you will have to be more explicit. You are confusing me, which I will admit is hard to do. However, there was such a conflict of businesses and operations at that time that it is impossible for me to answer to a specific question without involving all of the questions, as you well know.

Q. If you would do the best you can, sir. A. What is the question, sir?

(457) Q. Was there an operators' association that you know of? A. Where?

Q. In Cleveland, Ohio? A. Yes, there was.

Q. Directing your attention particularly to the music field, do you recall what the name of it was? A. Phonograph Association or Phonograph Merchants' Association, something like that.

Q. Something like that? A. Yes.

Q. Did you have any relationship with that organization? A. At one time I did.

Q. Well, do you recall at what time? A. After I went broke in business.

Q. That was the only time, sir? A. Well, you will have to explain to me what you mean by a "relationship."

Q. Well, were you hired by that organization for any purpose? A. That was my relationship.

Q. And that was after you went broke in business? A. That is right.

Q. And you had no business after that? A. I don't know what you mean, I had no other business.

Q. At the time you were hired by that organization, sir, (458) you say the business went broke, now. Did the Windsor Phonograph prove to be a success? A. No.

Q. Did you still own and have an interest in it at the time you were working for the Phonograph Merchants' Association? A. I wouldn't be sure on the dates.

Q. You wouldn't be sure? A. No. I had an interest in it, I had stock in it.

Q. Was it a successful business? A. No, it was not.

Q. Were you making any money on it? A. I didn't even get my investment back, so I couldn't make any money.

Q. It wasn't showing any profit? A. That is correct.

Q. Did there ever come a time when you succeeded in unloading that particular company? A. What do you mean "unloading"?

Q. Well, were you successful in convincing the operators of Musical Routes here in Cleveland that it might be desirable for them to purchase your interest in this particular company? A. Did I convince them?

Q. Yes, sir. **(459)** A. I don't think I convinced them.

Q. Well, they did become convinced, did they not? A. Well, if you mean did they purchase an interest in that —what was the name of this particular operation?

Q. Was it the Windsor Phonograph? A. Windsor Phonograph, yes, they did.

Q. Was it the balance sheet that convinced them, sir? A. No, I think the franchises that the company had was what convinced them.

Q. Was that Arion, the name of the juke box? A. It wasn't Arion that we had.

Q. What box was it? A. Rockola.

Q. Was that selling well at the time? A. Yes, it was.

Q. For how long? A. I'm not familiar with the operation to that extent.

Q. Well, you have been in the juke box business almost all your life, have you not, sir? A. I wouldn't say all my life, but a good portion of my life has been spent in and around vending equipment.

Q. Yes, sir, and you have a fairly good idea of what would be normally considered a moving box, and one that is not selling, would you not? **(460)** A. No, that's hard to determine. You have to understand the business. A piece of equipment could be what we would call in that particular business a hot number in the month of May and in June be obsolete.

Q. Well, did the operators who purchased this Windsor Phonograph Company from you get any hot numbers, sir? A. Oh, I think that the monies that they save in the difference between their retail price and wholesale price at which they were purchasing equipment from their own company more than showed a profit.

Q. Well, what date was it you made that sale? A. I can't be sure.

Q. Well, approximately? A. I can't even approximate it.

Q. Was it before you went with the Teamsters? A. Yes.

Q. You went with the Teamsters when, in 1951?

Mr. Knachel: 1953.

A. No, I became an officer of the Council in 1953. I went with the Teamsters the latter part of 1951 or early 1952.

Q. It was 1951 that they got the charter, is that not correct, sir? A. You may be right. Some time in that period.

Q. Up to that time you still worked with the Phonograph (461) Merchant's Association, did you not, sir? A. No, I don't—

Mr. Knachel: Your Honor, I would like to object. How far are we to go on this?

The Court: Well, I don't know. I have wondered if you were going to object. What is the purpose of it?

Mr. Kiernan: Your Honor, I didn't object when the defense was trying to develop Mr. Presser's wonderful labor background. I do think it might be enlightening to the jury, since they wanted to open it up, for us to develop something about it.

Mr. Knachel: I haven't said anything. I just object. I think we have gone far enough.

The Court: I am the one who wonders what the pertinency of all this is. What has this to do with the question we have here of this man defacing an invoice?

Mr. Kiernan: Nothing more, sir, than to counteract whatever attempt the defense made to show that Mr. Presser is an outstanding labor leader. We wanted to spread his record out and let the jury decide whether he is or not.

(462) If you don't feel it is pertinent we will drop this line of inquiry.

The Court: Well, I will be glad to have you tell me how it is pertinent. I don't get it myself.

Mr. Kiernan: We won't press it any further, your Honor.

The Court: All right. We have reached the adjournment time.

(Thereupon the jury was cautioned by the Court and an adjournment was taken to 2:00 p. m. on Friday, June 3, 1960.)

(463) Friday, June 3, 1960, 2:00 P. M.

The Court: You may proceed with the cross examination of the defendant.

CROSS EXAMINATION OF WILLIAM PRESSER (Resumed).

By Mr. Kiernan:

Q. Now, Mr. Presser, you have testified briefly as to your position with the Ohio Conference of Teamsters. Could you describe in somewhat more detail the purpose of that organization and the part you play in it? A. I am the President of the Ohio Conference of Teamsters. It is an organization that is comprised of Teamster Locals in the State of Ohio—

Mr. Knachel: Keep your voice up.

The Court: You will have to keep your voice up, Mr. Presser.

A. The Conference is composed of various Teamster Locals in the State of Ohio, Locals that belong to three separate Joint Councils. It serves as a clearinghouse for Local problems on the State-wide basis, and a clearinghouse for problems that might be area-wide, and by area-wide I mean the thirteen Central State District, or it may be International problems. It also serves as a legislative body.

Q. Well, generally, you would say it has to do with policy **(464)** matters, or matter of a general nature that might affect the various Teamster organizations within its jurisdiction? Would that be right, sir? A. If those problems would be on the state-wide or central area basis.

Q. Now, in connection with your duties as the President of the Ohio Conference of Teamsters, could you state whether or not you make an effort to keep yourself acquainted with the various factors, proposed legislation, or any other matters, that might have a bearing or an effect on the organizations under your jurisdiction? A. Well, I make an effort to keep myself posted.

Q. And you read articles that may have some bearing on issues that would come up? A. I don't know what you mean by reading articles.

Q. Well, is there a Teamsters publication, sir? A. There is an International monthly magazine.

Q. Does the International monthly magazine have articles in it of current interest with respect to proposed legislation, or any such matter, that would affect the affairs of Teamsters organizations? A. It does at times.

Q. And you would read those articles? A. At times I do.

Q. Well, if there were items in the newspapers which would (465) have a bearing on the Teamsters organizations, would you be likely to have those called to your attention, sir? A. I may at some time, and at other times I may not.

Q. Well, in the normal case, what would you say? A. I don't know what a normal case would be.

Q. Well, would that be a matter that should come to your knowledge, these types of things, in your position as President? A. I just don't know how to answer that question. I read the papers. There are times when I don't read the paper. Sometimes I read them, and sometimes I just glance through them, depending on how busy I am, how much time I have to do that.

Q. Did you ever feel that the work of the McClellan Committee could affect the Teamsters organizations?

Mr. Knachel: Objection.

The Court: He may answer.

A. I would answer yes.

Q. Were you interested in the findings of the McClellan Committee?

Mr. Knachel: Objection.

The Court: He may answer. It goes to his knowledge of the matters being investigated by the committee.

(466) A. Generally, yes.

Q. Now, directing your attention to the 24th of March, 1958, the McClellan Committee issued an interim report. Have you heard about this document, sir?

Mr. Knachel: I object to that. I don't see how it is material to this case.

The Court: Well, the only materiality I can see that it has is to show his knowledge of what the committee was doing, what his function was, and the interest it had in investigating and inquiring into labor-management relationships, and affairs of the Teamsters Union.

Mr. Knachel: But he already knew that because of the subpoena.

The Court: He wants to know what the defendant's knowledge of the matter was, what information was wanted by the committee. I think it is within the range of inquiry. I think he has a right to test his understanding and knowledge of what the committee wanted, what inquiry it was pursuing. I think that's one of the elements of the case, so far as his knowledge of it is concerned.

A. What was the question?

(467) Q. Did it come to your attention that the McClellan Committee had issued an interim report on March 24, 1958? A. I have no recollection of such a thing as an interim report.

Q. Did it ever come to your attention that they issued any report? A. I heard there were reports that the committee was making to the Senate.

Q. Pardon me, sir? A. I had understood and read in the paper that there were reports that the committee was making to the Senate.

Q. Yes, sir, and did you also know that the committee had some special findings with respect to the Teamsters Union, sir?

Mr. Knachel: Objection.

The Court: He may answer.

Mr. Knachel: Objection.

A. What I read in the papers.

Q. Well, did it specifically come to your attention at that time, sir, that the committee made mention of a Paul Dorfman? A. How did it come to my attention?

Q. I say did it, sir? A. I don't understand what you mean.

(468) Q. I am asking you again, sir, did it come to your attention that the committee's interim report made special mention of Paul Dorfman? A. I have no knowledge of having read an interim report.

Q. Well, did it come to your attention in any way? A. Frankly, I have no recollection, unless I read it in the paper, and I don't have any memory of that.

Q. Does it refresh your recollection that the committee made the statement in the report to the effect that Paul Dorfman ascended to his position as a result of the murder of his predecessor?

Mr. Knachel: Oh, I object to that.

The Court: What is the purpose of that?

Mr. Kiernan: May it please the Court, Paul Dorfman's name was one of the names on the champagne invoice.

Mr. Knachel: So what?

The Court: He may answer that question. I didn't know his name was on the list.

A. What is the question?

Q. Did it come to your attention that the committee made special reference to Paul Dorfman?

Mr. Knachel: May I have an objection **(469)** to all these questions?

The Court: Yes, you may save one.

Q. To the effect that he ascended to his position as a result or following the murder of his predecessor and that he was, in effect, a known consorter with criminals? A. The first time I heard that was in this Court room.

Q. You never heard that before this time? A. That's right.

(470) Q. Well, with respect to Dave Beck, did it come to your attention that the Committee made any special statements as to him? A. Yes, I read the papers on Mr. Beck.

Q. Well, were you aware of the fact that in 1958, in the summer of '58 or by that time Beck had been convicted for extorting between two and three hundred thousand dollars from the union?

Mr. Knachel: Objection.

The Court: He may answer.

A. You will have to give me the question again.

(Reporter read back the last question asked of the witness.)

A. I don't know how to answer that question. I am still not aware that he stole two or three hundred thousand dollars.

Q. Well, sir, the question was whether he had been convicted for stealing two or three hundred thousand dollars. A. He may have been. I have no knowledge of it.

Q. You never heard about that? A. Or my memory doesn't serve me on a conviction of two or three hundred thousand dollars.

Q. You wouldn't know about it? A. I didn't say that. My memory does not serve as (471) Mr. Beck being convicted of two or three hundred thousand dollars.

Q. Do you remember if he was convicted for any crime, sir? A. I know he had many problems, but I didn't follow his case that close. Mr. Beck and I were not exactly friendly.

Q. Beck and you were not exactly friendly? A. That is right.

Q. Well, with respect to Mr. Hoffa, did you have any information with respect to the Committee report? A. What do you mean by information?

Q. Well, did the Committee report—speak of Hoffa in glowing terms? A. I didn't read Committee reports.

Q. Well, had you ever read any statements by the McClellan Committee or attributed to the McClellan Committee? A. Articles in the newspaper.

Q. And those articles in the newspapers, did they speak of Mr. Hoffa in high terms? A. They spoke of him in all kinds of terms.

Q. And Mr. Brennan, Mr. Bert Brennan? A. I read about Mr. Brennan's problems in the newspaper.

Q. When you say "problems," you don't mean merely emotional problems, do you, sir? A. They may be emotional, too.

Q. Well, that would be too, but he did have other problems? (472) A. We can assume so.

Q. At least mentioned in the newspapers? A. We can assume so.

Q. Now, Mr. Presser, did there come a time when there was some proceedings in Court as a result of the election of Jimmy Hoffa or around that time, and an organization known as the Monitors was set up? A. I am not an International officer and I don't think I can answer your questions.

Q. Well, from your general knowledge, sir; did you have— A. General knowledge? Yes.

Q. And you were aware that the Monitors were set up? A. After they became in effect I was aware.

Q. Now, did you have any general idea as to what their aims or goals were? These would be either stated aims or goals. A. Not until I was informed by newspaper articles and some periodicals, magazines that I read on their aims and goals.

Q. Well, more specifically, did it come to your attention in any way that the monitors might be the cause of some union officials losing their jobs? A. This might be so.

Q. Well, more specifically did you ever have the feeling that you might lose your job as a result of (473) monitor action? A. I don't think I had the feeling I might lose my job because of monitor action.

Q. Did you have the idea that they might be after your job? A. When you say "they," do you mean all the monitors?

Q. The monitors, yes. A. No. I felt that one monitor might and still does.

Q. Is that your answer, sir? A. Yes.

Q. Did you ever make any statement to the effect that the monitors might be after your job, that you might be high on their list? A. I may have made such a statement.

Q. And did you say at that time what factors the monitors might consider in removing a man from his job? A. I may have. I have no recollection.

Q. Well, to refresh your recollection, Mr. Presser, I direct your attention to the 22nd of August, 1958. Did you attend a special meeting of the Ohio Conference of Teamsters at Columbus, Ohio? A. I may have. I am not sure of the date.

Mr. Knachel: Does my objection still hold to all this?

(474) The Court: Yes.

Q. Directing your attention to the 14th of August, 1958, did you attend an Executive Board Meeting of the Teamsters Joint Council 41 at the Carter Hotel here in Cleveland? A. I may have, probably did. I am not sure of the date.

Q. Well, does your organization keep authentic and accurate minutes, sir? A. We keep minutes, and we think they are authentic and accurate.

Q. They were given to the Government pursuant to a subpoena, the minutes of Joint Council 41, were they not? A. Anything that the Government asked for we gave to them, if it was humanly possible.

Q. And there was no indication that the minutes were not authentic, was there? A. My answer would be no.

Q. Well, you are not going to raise any question, sir, as to the authenticity of your own minutes, are you? A. I certainly am not.

Q. Well then, directing your attention to your own minutes of Joint Council 41, which makes reference to a meeting at the Carter Hotel in Cleveland on (475) August

14, 1958, was there a discussion at that time by you where you stated that the monitors of the International who were appointed by Court order were either now taking or momentarily would take certain action or would insist that the general president would take action which would affect detrimentally certain labor leaders in the Teamsters movement? Do you recall making that statement? A. I believe I made some such statement.

Q. And did you continue that the contemplated action would not only affect those leaders but through them the entire structural economy in the Teamsters movement as we now know it to exist, and did you continue that under the contemplated action actually no one would be safe; and since the movement could not exist apart from individuals and since the movement in the true sense of the word is made up of individuals, you repeated in your opinion that the movement was in jeopardy? Do you recall that, sir? A. I probably stated that.

Q. And do you recall after your statement that there was a general discussion where it was stated that the general president would be requested by the monitors to fire at least 60 Teamsters officials, and that this would just be the beginning, and among (476) this list, high on the list, was Chairman Presser? A. I may have stated it.

Q. And did you then state, sir, after this discussion that it was contemplated to eliminate all business representatives or leaders who had a record in the past, no matter how honest that individual is now living his life? Do you recall that statement, sir? A. I may have stated such a fact.

Q. And that it was also contemplated to eliminate anyone who had a bad reputation or who was associated with anyone who had a bad reputation? Do you recall that statement? A. I may have.

Q. Well, is there any question in your mind, sir, if the minutes of your own Joint Conference— A. If those are the minutes.

Q. —show that you made that statement? A. If those are the minutes and I can read them, I will tell you whether I said them or not.

(Witness examining document.)

May I have your permission to read the entire paragraph?

Q. Yes. A. "The general president either has or will be requested by the monitors to fire at least 60 Teamster (477) officials, this is just a beginning, among whom and high on the list was Chairman Presser. The monitors' request to the general president was in truth not a a request but an ultimatum. From this move would sprout a consistent pattern on the part of the monitors to run or control the International Union. This would be true from the contemplated installation of a new bookkeeping system in the International Union completely foreign to our movement, to the supervision of the election of convention delegates from the local unions. It was even stated by one monitor that areas or locals within our movement would not be permitted to choose their own legal counsel. Chairman Presser pointed out that in his informed opinion these actions, even though done under color of authority, would not only be illegal but ruinous to this or any other labor movement and its autonomy. And the Court of Appeals as recently as yesterday has ruled Chairman O'Donahue out as Chairman and it is a majority vote on the monitorship today, and has overruled several decisions of the Federal Court in Washington"—

Q. I don't want to interrupt you—

The Court: Is that in there?

A. I am sorry.

(478) Q. We are concerned now with your state of mind as of the summertime of 1958. We are not concerned with the legality or illegality of the monitor system, solely with your state of mind as of the day you made those statements. A. My state of mind—

Q. And you have answered the question. Thank you. A. Oh, I am sorry.

Q. Now, Mr. Presser, do you recall whether or not this was an unusual type of meeting that was held in the Carter Hotel? A. Yes, it was an unusual type of meeting.

Q. And in what respect was that? A. Well, the problems were unique to the Teamster Locals within the Conference.

Q. Well, despite the fact that the minutes don't show it, sir, was that in fact a joint meeting between the Ohio Conference of Teamsters and Joint Council 41? A. No, it was not. If my recollection serves me properly it was not.

(479) Q. Do you have any idea whether or not you could be mistaken? A. I could be.

Q. Well, if the minutes of the Ohio Conference of Teamsters were to be practically verbatim with these minutes showing that a meeting was held at the same hotel at the same time, would you say you were mistaken? A. Not necessarily so.

Q. Well, departing from that point for a moment, sir, could you state whether or not at this particular meeting of Teamsters Joint Council 41 they established a particular fund to protect you in the event you were fired from your job? A. Yes, they did.

Q. And the amount of that was what? A. Which one?

Q. Joint Council 41. A. $20,000.

Q. And did the Ohio Conference of Teamsters— A. They would match the same amount of money.

Q. $20,000 apiece? A. That's right. Are you familiar with the fact that I drew no salary—

Q. Just answer the question.

The Court: Never mind, just (480) answer the questions.

Q. Now, Mr. Presser, around this time did the Teamsters International set up a housecleaning organization of its own? A. I think sometime later on they did.

Q. Do you recall who the chairman of that organization was? A. I don't know if it ever had a chairman. I am not that familiar with the operation.

Q. Well, was there anyone who is generally referred to as chairman? A. Yes.

Q. And who was that? A. Mr. George Bender

Q. Were you interested in that organization? A. As a Teamster, yes.

Q. Yes, and it was, in effect, the Teamster's answer to the McClellan Committee, or the monitors, is that correct? A. I don't know if it was an answer to anyone.

Q. Well, it was their showing that they were going to clean up house if their house needed cleaning, is that not correct, sir? A. That was the intention of the International officials.

Q. Did you pay some attention to that organization? A. What do you mean by paying attention?

Q. Well, you were the President of the Ohio Conference of (481) Teamsters, you were the President of Joint Council 41, you were the President of Cab Drivers Local 555? A. Yes.

Q. And you are an officer of other Teamster organizations, are you not, in some capacity? Is that correct? A. Yes.

Q. Now, it would stand to reason, sir, that you would be interested in this particular organization, would it not? A. The clean-up committee?

Q. Yes, sir. A. This was an International function over which I had no control or no say.

Q. We are asking you, sir, not if you had any control—

Mr. Knachel: Wait a minute.

The Court: Were you interested? That's all he wants to know.

The Witness: As a member of the Teamsters Union, yes.

Q. Did it come to your attention on the 6th of September, the 7th of September and the 8th of September that the McClellan Committee was investigating the relationship between former Senator Bender and the Teamsters organization? A. I don't know whether it came to my attention or not.

Q. Mr. Presser, I will direct your attention to a clipping (482) from the Cleveland News dated Saturday, September 6, 1958. (Handing clipping to witness.)

The Court: What is the question?

Mr. Kiernan: Pardon me, sir?

The Court: What is the question?

Mr. Kiernan: I was giving the defendant an opportunity to examine the document.

The Court: Put the question.

Q. I will call your attention to a clipping of the Cleveland Press—

Mr. Knachel: The question was did that come to his attention.

A. I probably read this.

Q. Yes. A. I have no recollection of having read it, but I assume I read it.

Q. Would you state for the Court and jury what the article says? A. "The Senators asked for records. Bender calls quiz absurd."

Q. It's a rather large article, is it not, sir? A. I am not a judge of what is large.

The Court: What is the date of it?

Mr. Kiernan: September 6th.

(483) The Court: 1958?

Mr. Kiernan: September 6, 1958.

Q. I call your attention to a Cleveland Press clipping of the same date (handing newspaper clipping to witness). Would you say whether or not you probably read that article, sir? A. I probably read it. I'm not sure.

Q. And to round it out, I will call your attention to a Plain Dealer article of September 7th (handing newspaper clipping to witness). A. I probably read the article.

Mr. Kiernan: The Government will offer these articles in evidence, your Honor.

Mr. Knachel: Objection.

Mr. Kiernan: Not for the truth or falsity of the articles, your Honor, but for the purpose of showing an awareness on the part of Mr. Presser as to an investigation being conducted by the McClellan Committee as of September 6th, 7th and 8th, two days prior to the time that Walter Sheridan went to his office.

Mr. Knachel: Your Honor, I don't see how that possibly could have any relationship (484) to the issues here.

The Court: The only purpose I permitted the examination was that the Government relies upon a showing that there was a motive on the part of the defendant for the destruction of this invoice showing the names of these people. That's the only purpose of it. They want to show what motive he had for doing it, that that was based upon the stirring up of matters before the committee. The articles, the newspapers, of course, are not evidence of anything. I don't know whether we ought to admit them in evidence. The witness has answered the question that he was aware of that fact in his testimony.

Mr. Kiernan: Well, I will withdraw the offer.

The Court: That was on the 6th?

Mr. Kiernan: The 6th, 7th and 8th.

The Court: The 6th, 7th and 8th of September, 1958?

Mr. Kiernan: Yes, your Honor.

Q. Now, Mr. Presser, along the same line, directing your attention to the next day, September 9th, did you have occasion to write a letter to Mr. Donald Pfeiffer? (485) A. I may have.

Q. I will hand you what has been marked Government's Exhibit 32-B, and ask you if you can identify it, please (handing exhibit to witness)? A. Yes, I wrote this letter.

Q. Would you read the letter, please, sir? A. "Mr. Don Pfeiffer, Secretary, Ohio Conference of Teamsters, 233 South High Street, Columbus 15, Ohio.

"Dear Sir and Brother:

"Enclosed find letter and check which are self-explanatory. Did not forward this to you immediately, somehow unthinkingly I placed it in one of my files and did not run across it until this morning. I should have mailed this to you upon receiving the same, which was either on the 25th or 26th. However, as long as Mr. Bender feels that there will be a conflict of interests, it is necessary we find someone else to further process our problems under the Valentine Act."

And it is signed by me.

The Court: That letter was before us when Mr. Pfeiffer testified. Didn't he identify it?

Mr. Kiernan: Yes, sir. I wanted Mr. Presser to state that it was his.

The Court: What was the date of that?

(486) Mr. Kiernan: September 9.

The Court: 1958?

Mr. Kiernan: That's right.

Q. Now, Mr. Presser, directing your attention to Defendant's Exhibit G, that being the sheet of paper from your minutes of 1953, could you state whether or not this resolution which was passed at an Executive Board meeting was ever incorporated in the by-laws of your organization? A. I don't think so. I'm not sure, but I don't think so.

Q. For the record, particularly, I am now referring to the authorization given to the President to use his discretion in dispensing Christmas gifts for the Council. You say you do not think it was ever made a part of the by-laws? A. I don't believe so.

Q. Is there any question in your mind, sir? A. We didn't specifically spell out in the by-laws the functions of the officials of the organization.

Q. Now, sir, do you have any minutes from any general meeting where this particular motion was called to the attention of the general membership, the people who pay the dues in this organization? A. I don't know. I can't answer yes or no.

Q. Now, earlier in your direct testimony, Mr. Presser, you (487) stated that the average dues of the Teamsters were $3 or $4. A. I said the average dues when I took office was $3, and the average dues today of Teamsters Locals throughout the Ohio area are $4.

Q. Would you say the Teamsters organization generally is on good financial footing; not only Joint Council 41 but the various Locals? A. I don't understand what you mean. You mean each separate Local?

Q. Yes, sir. A. Well, some are and some are not.

Q. Well, are they able to make a go of it at $4 dues? A. Well, some cannot make a go at $4 and have higher dues, and some have less than $4.

Q. Directing your attention to your own Local, the one you set up, Local 410, would you state what the average dues are of the members in that organization? A. What the dues are today?

Q. Yes, sir. A. I don't know.

Q. Well, would $25 or $30 a month be a fair statement? A. I don't know.

Q. Well, at the time you were there, sir? A. I think the dues at that time were $3 or $4, and the (488) route men had a standing assessment, I believe, of $22 or $23 a month.

Q. Now, sir, would you state whether or not this assessment was based on machines rather than on men? Would you explain the dues structure of Local 410 for the Court and jury, please? A. That's a long time ago. It's hard to remember how they had set it up.

Q. Well, you set it up, didn't you, sir? A. No, I didn't set it up. The membership set it up. One man does not set up a dues structure in an organization.

Q. Now, Mr. Presser, didn't you say you organized Local 410 from the top down? A. Are you telling me I organized from the top down?

Q. Yes, sir. A. I am telling you I organized from the bottom up and from the top down and split in the middle.

The Court: When was this, how long ago?

Mr. Kiernan: This was an answer that was brought out on direct examination.

Mr. Knachel: I didn't bring it out. I guess I asked him what his other Teamster Unions were.

(489) The Court: How long ago was this?

Mr. Kiernan: 1950.

The Court: 1950?

Mr. Kiernan: That's right.

The Court: Why would that be connected with our issue? Is he still connected with it?

Mr. Kiernan: I think Mr. Presser could answer that.

The Witness: No, your Honor.

Mr. Kiernan: I didn't know whether being President of the Joint Council would be considered as being connected with Local 410.

The Witness: Every Local has its own officers, and has autonomy.

Q. You did tell us on cross examination that you had 34 years of fighting for the working man, 34 years of picket duty. A. I didn't say I had 34 years of picket duty, nor did I say I put in 34 years fighting for the working man.

Q. Well, we won't ask the Reporter to read it back, but I'll ask you, did your counsel not ask you on direct examination—

Mr. Knachel: I think he said he was married about that time, that many years.

(490) The Court: Let him ask the question.

(491) Q. Well, did you give any testimony with respect to going out on the picket lines, sir? A. I don't recollect saying anything about a picket line.

The Court: Well, I think you did. Now, I don't know how important it is.

Mr. Knachel: I asked if he had ever been on a picket line and he said yes.

The Witness: Yes.

The Court: 34 years is what I have down.

Mr. Knachel: Well, that is news to me.

The Court: Maybe I misunderstood. I don't know how material it is.

Q. Well, did you have 34 years of experience on the picket line, Mr. Presser? A. I have had 34 years in the labor movement and on many occasions on picket lines.

Q. And did you ever know an individual named Harry Card? A. Did I what?

Q. Ever know an individual named Harry Card? A. Yes, I did.

Q. And he was an oldtime Teamsters man? A. Yes.

Q. And what was his position, sir? (492) A. He was president of a local in Toledo, I believe Local 20. He was also Chairman or President of the Ohio Conference of Teamsters.

Q. Yes. And at that time did you try to bring your Local 410 into Toledo?

Mr. Knachel: Well, I object to this.

The Court: What is the relevancy of it?

Mr. Kiernan: I want to show, your Honor, that the Court in Toledo held that 410 was a racket and that the President of the Ohio Conference Harry Card at that time testified to the same thing. The only reason we are going into this is because the defense tried to bring out on direct that Mr. Presser has a sterling labor record.

Mr. Knachel: Well, I move for a mistrial, your Honor.

The Court: I don't think it is material or relevant. I will sustain the objection.

Mr. Kiernan: We will drop the line of inquiry, your Honor.

Q. After you left 410 did you become President of 555, sir? (493) A. No, I became a Trustee.

Q. Pardon me? A. I became a Trustee.

Q. And did you eventually became President? A. Yes.

Q. How long after you joined 555 did you become President? A. I'd say about five years.

Q. And when did you first join 555, sir? A. When I became a Trustee.

Q. Well, when was that? A. Some time in '53.

Q. Well, when did you become the president of 555? A. About five years later.

Q. Well, would it have been, to stimulate your memory, would it have been in 1956? A. It could have been. It could have been in '57. I am not familiar with the date.

Q. That is a cab driver's local, is it not, sir? A. That it is.

Q. Could you tell me what special requirement if any are needed in the City of Cleveland to be a cab driver?

Mr. Knachel: Objection.

The Court: What is the relevancy of that, Mr. Kiernan?

(494) Mr. Kiernan: Withdraw the question, your Honor.

Q. Now, Mr. Presser, on your direct examination you went through a litany of the individuals who had keys to your office. A. Yes.

Q. Now, we will repeat those list of names to the best of our memory. Now with each name would you tell the Court and jury whether any reason suggests itself to you why that particular individual would have destroyed the document that we are concerned with today?

Mr. Knachel: Objection.

The Court: Sustain the objection to that. I don't see how that is material.

Q. Mr. Presser, have you ever been convicted of a crime? A. That is questionable in my mind.

The Court: I didn't hear the answer.

Mr. Knachel: Well, the problem before the Court is a nollo contendere. I think that is it?

Mr. Kiernan: Yes, your Honor. A nollo contendere is a conviction.

The Court: Well, there is a difference of opinion lately about that.

(495) The courts don't seem to agree. For these purposes I would rule that it is not a conviction.

Mr. Kiernan: No further questions.

Mr. Knachel: I have nothing further.

The Court: You are excused. Stand down.

Mr. Cardinal: Call Landis O'Brien.

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(496)

LANDIS O'BRIEN, called as a witness on behalf of the Defendant, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION OF LANDIS O'BRIEN.

By Mr. Cardinal:

Q. Will you state your full name, please? A. Landis O'Brien.

The Court: What is the first name?

The Witness: Landis.

Q. What is your business or occupation? A. I am in the motor freight business as an intra and interstate common carrier, Mohawk Motor, Incorporated of which I am President and Chairman of the Board. I am also President of the Northern Ohio Truck Association headquartered here in Cleveland.

Q. How long have you been engaged in that business, Mr. O'Brien? A. About 32 years.

Q. During the course of your 32 years have you become acquainted with Mr. William Presser? A. I have.

Q. And how long have you known Mr. Presser? A. About five or six years.

(497) Q. Under what circumstances did you come to be acquainted with Mr. Presser? A. In labor negotiations, in matters of dispute between the union or unions and the

industry, and as a Trustee of the Ohio Highway Driver Council Fund, insurance fund.

Q. During the past five years, then, have you had occasion to come into contact with Mr. Presser in any of your functions frequently—I mean, how frequently have you come in contact with him? A. Oh, I would say an average of five or six times a year.

Q. And they would be under circumstances such as you have related here? A. Yes, regarding the motor freight industry.

Q. Have you ever had occasion to rely upon Mr. Presser's word? A. Yes.

Q. Do you have occasion to have contact with other men and other firms in your industry who have contact with Mr. Presser? A. Yes, I do.

Q. Would you state for the Court and for the jury what Mr. Presser's reputation for truth and veracity is (498) among the circles in which he and you operate? A. Well, the subject has not been discussed. However, the few people whom I have had any occasion to discuss that subject with, their dealings with him have been very good, very strong.

Q. What is his reputation for truth and veracity among the carriers? A. To the best of my knowledge, good.

Q. Would you believe Mr. Presser under oath? A. Would I? Yes.

Mr. Cardinal: That is all.

The Court: Any questions?

Cross Examination of Landis O'Brien.

By Mr. Kiernan:

Q. Mr. O'Brien, would you state where you live, please? A. Yes. I live at Rural Route 1, Tiffin, Ohio.

Q. And would you state what Mr. Presser's home address is, please? A. Other than Cleveland or suburbs, I do not know his home address.

Q. Do you know where he formerly lived? A. No, sir.

Q. Do you know, his home telephone number? A. No, sir.

(499) Q. Do you know anyone who lives in his neighborhood? A. No, I do not.

Mr. Kiernan: No further questions.

The Court: That is all. You are excused, Mr. O'Brien.

The Witness: Thank you.

The Court: Call your next witness.

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(500)

Ernest Zeve, called as a witness on behalf of the Defendant, being first duly sworn, was examined and testified as follows:

Direct Examination of Ernest Zeve.

By Mr. Cardinal:

Q. Would you state your full name? A. Ernest Zeve.

Q. What is your business or occupation? A. I am in the home furnishing business.

Q. What do you have? A. Well, we sell blankets, mattresses, silverware, dishes to people on the installment plan.

Q. And where is your business located? A. 15453 Euclid.

Q. Do you live in Cleveland? A. Cleveland Heights.

Q. Do you know Bill Presser, Mr. William Presser? A. Yes, sir.

Q. How long have you know him? A. I would say about five years.

Q. Under what circumstances did you become acquainted with Mr. Presser? A. Well, I happen to be one of the volunteers for the (501) Parent Volunteer Association for Mentally Retarded Children, and my position as volunteer special chairman of special events, which means we go out and try to raise money by selling tickets and raising membership and things like that, one of my chores going around the neighborhood, I was told to go and see

Mr. Presser. We were selling tickets for a fair and trying to get members and that is how I met him. I went up there and introduced myself to his secretary and she referred me to him.

Q. During the past five years on how many occasions have you had to come in contact with Mr. Presser? A. Well, we are out about every two or three months trying to raise money, and so I make my visit pretty near about the same way.

Q. And what are the circumstances of your meetings with Mr. Presser? A. Well; first time I went up there?

Q. Generally on the times that you have occasion to meet with him? A. Well, most of the time I am referred that it has to be submitted to the Joint Council Committee and when they have a regular meeting that I can come down and speak to the Committee and tell them what our program (502) is and then they take a vote on it.

> Mr. Kiernan: May it please the Court, I don't know what the purpose of this line of questioning is.
>
> The Court: I don't think counsel intended the answer and I don't think the witness exactly understood what was required. Perhaps you better ask him a little more specifically what you would like to know.
>
> Mr. Cardinal: The answer may go out. I didn't mean that.
>
> The Court: What he seeks is the nature of your relationship or acquaintance with him.

Q. On these times that you have met with Mr. Presser over the past five years, what is the nature of your meetings with him? A. I would go there to try and see if we could get some financial assistance for the Parent Volunteer Association to help these retarded children.

Q. Have you had other types of relationship with Mr. Presser? A. I have stopped in and visited with him and tell him about different things we were going to do with our (503) organization, and talk to him about it and see if we could get some advice and guidance trying to build a nursery here, and we were talking about that program.

Q. Is he a member of your organization? A. Yes he is a member of our organization. As a matter of fact they asked him to be an honorary director of our organization so he would help with the programming.

Q. And he is an honorary director? A. He is a member. He was too busy to serve that much time with us.

(504) Q. And he is an honorary director? A. He was a member. He was too busy to serve as a director.

Q. Well, have you had occasion to associate with other people in that movement who are acquainted with Mr. Presser? A. Yes, sir.

Q. What is Mr. Presser's reputation for truth and veracity among the people who associate with you and Mr. Presser? A. Mr. Presser's reputation is good, he has been truthful and honest with us at all times.

Q. Would you believe Mr. Presser under oath, Mr. Zeve? A. Yes, sir, I have.

Mr. Cardinal: That's all.

CROSS EXAMINATION OF ERNEST ZEVE.

By Mr. Kiernan:

Q. Mr. Zeve, can you state—you said you went up to see Mr. Presser on the advice of a neighbor? A. Of a member.

Q. On the advice of a member? A. Yes, sir.

Q. And you made some reference, I believe, to a secretary? A. The secretary in his office, I went to her and announced myself, told her who I was.

Q. Oh, you didn't go to his home, then, sir? A. Not the first time, no, sir.

(505) Q. And you went there to solicit some contributions? A. Yes, sir.

Q. Was a contribution made? A. At that time, no.

Q. Well, eventually was it made? A. Yes, sir.

Q. By the Teamsters organization, sir? A. Well, we got one from Mr. Presser and also from Joint Council 41, I believe it is.

Q. Who among your organization have you had an opportunity to speak with concerning Mr. Presser's reputation and truth or veracity? A. Our organization?

Q. Yes, sir. A. Practically the entire Executive Board, we have been talking about him several times.

Q. Has the question come up that he might not be honest or truthful that led to a discussion? A. No, we have talked about his contributions to us, and his word has always been all right with us. We always found his word was all right.

Q. In that respect, he said he would get you some contributions, and he eventually did? A. And also in trying to help us to build this nursery, trying to get people interested in that also.

(506) Q. But no question came up that he might be dishonest or might not be truthful, or anything of that kind? A. Well, we had no reason to think he was dishonest because his word was good.

Q. So there was no discussion as to whether he is honest or dishonest, was there, sir? A. Well, we had nothing to doubt his honesty, we had his word, which was always all right with us.

Mr. Kiernan: No further questions.
The Court: You may stand down.

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(507)

Thereupon the defendant called as a witness William G. McIntyre, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION OF WILLIAM G. MCINTYRE.

By Mr. Cardinal:

Q. Will you give us your full name, Mr. McIntyre? A. William G. McIntyre.

The Court: Is that M-c-I-n-t-y-r-e?
The Witness: Yes, sir.

Q. What is your business or occupation, Mr. McIntyre? A. I am Director of Industrial Relations with the Wilson Freight Forwarding Company in Cincinnati.

Q. What are your duties with Wilson Freight Forwarding Company? A. I handle all of the company's labor relations and personnel relations.

Q. How long have you been associated with Wilson? Since October, 1956.

Q. During the course of your duties with Wilson Freight Forwarding Company, have you come in contact or been associated with Mr. William Presser? A. I have.

Q. Do you know Mr. William Presser? **(508)** A. Yes, I do.

Q. How long have you known him? A. I first met Mr. Presser in June, 1953.

Q. And under what circumstances did you meet Mr. Presser? A. At that time he was a guest speaker on an industrial relations program that the association I was with at that time was putting on in Cleveland, Ohio.

Q. And he was the speaker for your association here? A. Yes, sir.

Q. Since that time have you had occasion to have contact with Mr. Presser? A. Yes, in July, 1955, I moved from Washington, D. C., to Ohio as Executive Secretary of the Motor Carriers Labor Association, and in my capacity as Executive Secretary from July, 1955 and through to my present position, I would say I have been in contact with Mr. Presser on an average of once or twice a month ever since then.

Q. What are the circumstances of your meeting with Mr. Presser? What were the nature of your contacts with him? A. We met quite frequently—I am a member of our grievance committee, for example, and we meet monthly on that level, and Mr. Presser is generally in attendance at our grievance meetings where we handled grievances of all the truck operators in the State of Ohio, and of **(509)** Teamsters locals in the state.

Q. Would your association be compatible with his or is it contrary with his? A. It is contrary, to the extent that I am attempting to represent the best interests of my company who, in this case, is the employer, and he represents the employees, or some of our employees.

Q. Do you help negotiate contracts with Mr. Presser? A. Yes.

Q. Or with his affiliated locals? A. Yes, I have.

Q. And you are in charge of that phase of it for the Wilson Freight Forwarding Company? A. Yes, I am.

Mr. Kiernan: Objection. May it please the Court, I don't believe that this line of inquiry is proper to show that he has a knowledge of his reputation in the community.

The Court: I suppose he is coming to that.

Mr. Cardinal: Well, he has a character whether it's around the neighborhood or not.

The Court: I think it is proper. Of course, the ultimate test is what his reputation is in the community, or in the state.

(510) Mr. Cardinal: Of course, we think Cincinnati is still in Ohio.

The Court: Yes, go ahead.

Q. During the time that you have known Mr. Presser, have you had occasion to come into contact with other people who have known and come into contact with Mr. Presser? A. Yes.

Q. In your own business? A. Oh, yes, very frequently.

Q. What would you say is Mr. Presser's reputation for truth and veracity among the people that you know and associate with, and who also associate with Mr. Presser? A. I think that his reputation among my acquaintances in the industry who are acquainted with Mr. Presser is of high caliber as to his honesty and integrity and veracity. It is beyond question in the circles that I met him in.

Q. Would you believe Mr. Presser under oath, Mr. McIntyre? A. Yes, I would.

Mr. Cardinal: That's all.

Mr. Kiernan: No questions.

The Court: You may step down.

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(511)

Thereupon the Defendant called as a witness MATTHEW J. O'BRIEN, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION OF MATTHEW J. O'BRIEN.

By Mr. Cardinal:

Q. Mr. O'Brien, would you state your full name, please? A. Matthew J. O'Brien.

Q. What is your business or occupation, Mr. O'Brien? A. I am in the trucking business. I am President of O'Brien & Nye Cartage Company—

The Court: You will have to speak louder.

A. I am President of O'Brien & Nye Cartage Company and past President since last February of the Cleveland Draymen Employers Association. That is a group of cartage companies, a paid association, industry association, for the purpose of bargaining union contracts with different locals.

Q. How long have you been in that business, Mr. O'Brien? A. About 35 years.

Q. How long have you been President of O'Brien & Nye Freight Forwarding Company? A. 30 years.

(512) Q. During the time you have been associated with this trucking company, have you come into contact with Mr. Presser? A. Yes, sir, I have.

Q. Do you know Mr. Presser? A. Yes, sir, I do.

Q. How long have you known him? A. Well, since shortly after he came into office as President of the Teamsters Joint Council.

Q. Do you recall when that was? A. I think it would be about seven years ago, to my knowledge.

Q. Seven years? A. Yes, I think it would be seven years ago at this time when I first became acquainted with Mr. Presser.

Q. What were the circumstances under which you became acquainted with Mr. Presser? A. Well, sir, it is standard procedure, was standard procedure and still is standard procedure for our association to make contact with the Chairman of the Teamsters Joint Council, the head of the Teamsters Joint Council, because it is to us in the industry almost like a court of appeals, whereby if we do get into controversy with a particular local, and we feel that it is a matter of controversy which cannot be amicably settled, we have always made it a practice to take it to (513) somebody a little higher, to get their viewpoint on it and try to avoid, of course, a work stoppage, or perhaps an injustice to a particular employer.

Q. During the time that you have known Mr. Presser, have you had occasion to meet with him and come into contact with him often? A. I have seen Mr. Presser on different occasions. However, our association, through its secretary, has contacted him many, many times on matters pertaining to grievances which could not be handled at the regular level. That would be, of course, the business agents or the officers of a particular local. Then, of course, the matter would be taken up to Mr. Presser, a joint conference arranged, at which he would use his good offices to try to iron it out to the satisfaction of both parties, as much as was possible.

Q. At the times that you have had contact with Mr. Presser, what were the circumstances of those contacts? What was the nature of your meetings with him? A. Well, I made it a point to more or less make a courtesy call and let him know, of course, that we were in business, that our association was in business, and felt that the better I became acquainted with him, the better and easier it would be to handle any problems that might come up.

Q. Do you know people who have known Mr. Presser? (514) A. Yes, I do, in our industry I know many of them.

Q. And what is the reputation of Mr. Presser among those people for truth and veracity? A. Mr. Presser's reputation is very good. He is a man of his word.

Q. Would you believe Mr. Presser if he spoke under oath? A. As I know Mr. Presser, I certainly would.

Mr. Cardinal: You may step down, Mr. O'Brien.

The Court: You are excused.

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(515)

Thereupon the Defendant called as a witness William A. Brennan, who, being first duly sworn, was examined and testified as follows:

Direct Examination of William A. Brennan.

By Mr. Cardinal:

Q. Mr. Brennan, would you state your full name, please? A. William A. Brennan.

Q. What is your business or occupation? A. I am president of a regularly licensed motor carrier, in the trucking business, the Cleveland, Columbus & Cincinnati Highway, Inc.

Q. How long have you been engaged in the trucking business, Mr. Brennan? A. Practically all my life, since I was 16; 46 years.

Q. How long have you been president of your present company? A. I was elected president in January, 1956.

Q. Have you been with them for some time? A. Yes, sir, I am employed by the CCC Highway for 27 years.

Q. Where are they located? A. Our general office is here in Cleveland, in the Williamson Building.

A Juror: We can't hear.

The Court: You will have to talk (516) louder.

Mr. Cardinal: Keep your voice up.

The Witness: All right, sir.

Q. During your employment with the CCC Truck Line, Mr. Brennan, have you had occasion to become acquainted with Mr. William Presser? A. I have, sir; yes, sir.

Q. And how long have you known Mr. Presser? A. Well, I met Mr. Presser approximately six years ago, but didn't have anything to do with him as far as business is concerned until I was elected president.

Q. And that was when? A. In January, 1956.

(517) Q. And since 1956 have you had occasion to have contacts with Mr. Presser? A. I have.

Q. Frequently? A. I have, yes.

Q. And what are the circumstances under which you meet with Mr. Presser? A. Well, the usual course of management and labor relations. We have approximately 600 employees that are members of the Teamsters Union. And in connection with the administration of their work and their duties we find it necessary to consult with labor officials frequently.

Q. And is your acquaintance in the industry and in the management end of the industry rather wide? A. Yes.

Q. And do you come into contact with people who know Mr. Presser, sir? A. I do, sir.

Q. And associate with him? A. I do, yes.

Q. Can you tell us what Mr. Presser's reputation is among those people for truth and veracity? A. Very fine. Honest and reliable as far as we are concerned. That is my opinion.

(518) Q. And would you believe Mr. Presser if he were under oath? A. I would, sir.

Mr. Cardinal: That is all.

The Court: Any questions?

Mr. Kiernan: No questions.

The Court: You are excused, Mr. Brennan.

The Witness: Thank you.

Mr. Knachel: Could I take a look to see who's outside?

The Court: How many do you have? Ordinarily there is a limitation on the number of character witnesses. You have had five.

Mr. Knachel: What is the limit?

The Court: Well, it is discretionary. That is more than usually testify.

Mr. Knachel: I didn't know you had any sort of thing.

The Court: Oh, yes, some limitation. If you have one here I will hear him.

Mr. Knachel: Is this your limit?

The Court: I think so. That will be six.

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(519)

Garnald L. Smith, called as a witness on behalf of the Defendant, being first duly sworn, was examined and testified as follows:

Direct Examination of Garnald L. Smith.

By Mr. Cardinal:

Q. Will you state your full name, sir? A. Garnald L. Smith.

The Court: You will have to talk louder than that so the members of the jury can hear you.

Q. What is your business or occupation, Mr. Smith? A. Assistant Vice-President, Motor Cargo, Incorporated, Akron, Ohio.

Q. How long have you been with Motor Cargo? A. In excess of 21 years.

Q. And have you been in that capacity for the 21 years? A. No, sir, I have not.

Q. How long have you been in your present capacity with Motor Cargo? A. About two years.

Q. During your employment with Motor Cargo have you had occasion to become acquainted with Mr. William Presser? A. Yes, sir.

(520) Q. How long have you known him? A. About six years.

Q. What were the circumstances under which you became acquainted with him? A. Well, I handled the labor relations for my company in the position I was in prior to being made an assistant vice-president.

Q. How long were you in that position? A. In excess of 10 years.

Q. How long have you known Mr. Presser? A. About six years.

Q. Now during the six years that you have known Mr. Presser, have you had occasion to meet him on various occasions? A. I have.

Q. What were the circumstances under which you met with Mr. Presser? A. They pertained to labor relations.

Q. How often? A. Well, that would vary.

Q. Could you give me some average number of times that you met with Mr. Presser under those circumstances? A. Well, during labor negotiations it would be very frequent, as high as every day in the week. Other times it would go maybe once a month or maybe even a (521) greater period than that, maybe once in two months. But it would average, I would say it would average at least two or three times a month.

Q. In your work you have become rather well acquainted among the industry, I would assume? A. That is correct.

Q. And do you know people, acquaintances, who are known to Mr. Presser and to you? A. I do.

Q. And among your associates can you tell us what Mr. Presser's reputation for truth and veracity is? A. To my knowledge it has never been questioned.

Q. Would you believe Mr. Presser if he were under oath? A. I would.

Mr. Cardinal: That is all.

The Court: Any questions?

Mr. Kiernan: No, your Honor.

The Court: That is all. You are excused, Mr. Smith.

Any further witnesses?

Mr. Knachel: Beg pardon?

The Court: Have you any further witnesses in fact?

Mr. Knachel: No.

The Court: Are you resting then?

(522) Mr. Knachel: Yes, your Honor.

The Court: The Defendant rests. Have you any rebuttal?

Mr. Kiernan: I believe so, your Honor. Could we take about a five or ten minute recess?

The Court: Yes. Any rebuttal?

Mr. Kiernan: Yes, I believe so.

The Court: The jurors will be at their ease for a few minutes.

(Recess taken.)

(523) REBUTTAL.

The Court: You may proceed.

Mr. Kiernan: May it please the Court, it came to the attention of the Government during the recess that Defendant had certain rank and file members and also a Rabbi who he could have called as character witnesses. The Government will stipulate that those individuals, if called, would have testified to the Defendant's good reputation.

The Court: All right.

Thereupon the Government called as a witness in rebuttal Ray C. Bodmer, who, being first duly sworn, was examined and testified as follows:

Direct Examination of Ray C. Bodmer.

By Mr. Kiernan:

Q. Would you please state your full name? A. Ray C. Bodmer.

The Court: Will you spell it, please?

The Witness: B-o-d-m-e-r.

(524) Q. Your business or occupation, sir? A. I am a commercial manager with the Chesapeake and Potomac Telephone Company, Washington, D. C.

Q. Could you speak a little louder, please, Mr. Bodmer? A. I am a commercial manager with the Chesapeake and Potomac Telephone Company, Washington, D. C.

Q. Would you state generally what the nature of your duties are in that capacity? A. Well, the nature of my duties consist of arranging services and collections for numerous accounts assigned to my unit in Washington.

Q. And this would be collections having to do with telephone service, sir? A. That is correct.

Q. Now, in connection with your duties, do you have anything to do with long-distance telephone slips? A. Well, we receive the long-distance telephone tickets and our custodian is responsible for their keeping.

Q. Would you speak up pretty loud, Mr. Bodmer, because the acoustics here are not too good. I will hand you what has been marked Government's Exhibits 33 and 34 for purposes of identification and ask you if you can state what they are. A. This is a ticket, the type of ticket we use for long-distance toll calls that are completed through (525) our operators from a Washington toll number in Washington, D. C., and it is a record of a call, or appears to be.

Q. Are those tickets kept in the regular course of business, sir? A. That is correct.

Q. Mr. Bodmer, would you state for the Court and jury, sir, what those two tickets show? A. Well, what they are for?

Q. What they show, from reading those two tickets what they indicate. A. One ticket is dated September 11, 1958, and is an ATT call from Washington, D. C., Sterling 3-0525, by a person by the name of Hoffa to Cleveland, Ohio, CH 1-7053, to a person by the name of Presser.

Q. Speak up louder. A. To Cleveland, Ohio, CH 1-7053, person called Presser, a three-minute call, person-to-person.

Q. Can you state whether that call was completed? A. Well, it is stamped as a completed call by our timing device, and it is billed. If it were not a completed call it should not have been billed.

Q. Do you have a record, sir, of the telephone company which would disclose the address of the organization, or the organization and address which the telephone number is listed to in Washington? (526) A. Yes, sir. I have what we call a Service Record card, which is a record in our office for Sterling 3-0525 with a listing of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers Union at 25 Louisiana Avenue, Northwest.

Q. Now, Mr. Bodmer, make reference to the other telephone toll slip you hold in your hand and tell the Court and jury what that shows? A. Well, this is another September 11, 1958 call from Washington toll number Sterling 3-0670, the person calling Hoffa, to Cleveland, the call was originally placed to CH 1-7053, it was changed to EV-1-1515, the person called was Presser, the filing time 5:00 p.m., an 18-minute call, person-to-person.

Q. Well, sir, do you have a record showing what telephone number in Washington made this call? A. Well, the Sterling 3-0670 telephone number is an auxiliary line that is billed to the telephone account Sterling 3-0525.

Q. And that is the Teamsters International number? A. That is correct.

Mr. Kiernan: May it please the Court, the Government offers Government's Exhibits 33 and 34 in evidence. No further questions.

(527) The Court: Any questions?

Mr. Knachel: Yes, your Honor.

Cross Examination of Ray C. Bodmer.

By Mr. Knachel:

Q. Did both of these calls initiate from Washington, D. C.? A. Yes, sir, that is correct.

Q. And they are both calls on September 11, 1958? A. Yes, sir.

Q. And both these were initiated by Mr. Hoffa? A. Supposedly so, yes, sir.

Q. Now, you don't know who received these calls in Cleveland, do you? A. Well, the only thing I know they are marked person-to-person and the "P" indicates the person that they are to be completed to. There is no evidence on the ticket that I can see that they were not completed.

Q. Well, suppose a man called me from Washington person-to-person and when he got on the line he found out I wasn't there and he said he would talk to my wife and find out where I was. It would still be the same ticket, wouldn't it? A. No, in that case the "person-to-person" should be stroked out and the billing would be different. (528) In other words, a different rate would apply.

Q. Now, there was one person-to-person that was made to a Cherry number and then was transferred to, you say, an Evergreen number? A. I don't know what it is. It is an EV number.

Q. EV 1-1515? A. Yes, sir.

Mr. Knachel: That's all.

The Court: That's all, you are excused.

Mr. Kiernan: May it please the Court, I would like to speak with counsel.

(Conference between counsel.)

Mr. Kiernan: No further questions.

Mr. Knachel: May I consult with my associate?

The Court: Yes.

(Conference between defense counsel.)

Mr. Knachel: Nothing further.

The Court: That is all. You are excused.

Anything further?

Mr. Kiernan: No, your Honor, the Government rests.

The Court: Both parties rest.

(529) Now, it will be impossible for me to have argument and then adjourn until Monday. I think what I will do is to let the jury go until Monday at 1:00 at which time counsel can be prepared to argue the case to the jury followed by the Court's instructions.

Do counsel find any fault with that in any way or would you like to come Monday morning and argue? I would rather do this. Of course, I have to prepare my instructions and I always hesitate to have argument of counsel and defer to giving the instructions. I like to be in a position to give my instructions following the arguments of counsel.

Mr. Knachel: That is satisfactory.

Mr. Kiernan: Very satisfactory.

Mr. Knachel: There is one thing that bothers me. never at any place during this trial have the jurors had an opportunity to see some of these key exhibits.

The Court: Well, they will have them in the jury room.

Mr. Knachel: If they could see them now it would be better in the argument.

The Court: Well, yes. What ones, (530) for instance?

Mr. Knachel: Well, the torn piece of paper and the note made by Mr. Sheridan.

The Court: Yes. Let them see those.

Are there any other exhibits which might be helpful to the jury to see in advance of argument?

Mr. Kiernan: No, unless the jury requests some other exhibits.

(Thereupon jury examined above exhibits referred to and discussion had between Court and counsel.)

Mr. Knachel: I want to renew my motion.

The Court: Yes, the record may show it.

Members of the jury we are going to suspend at this time until Monday afternoon at 1:00 for the purpose of giving the Court an opportunity of drafting its instructions to be given to the jury. I think that ought to be ample time.

Of course from now until 1:00 Monday afternoon it becomes incumbent upon the jurors to continue to bear in mind scrupulously the instructions which I have heretofore given you (531) at other adjournment periods not to discuss this case among yourselves, nor with anyone else. Permit no one to talk with you about it or any phase of it, and avoid forming or expressing any opinion respecting the merits of the case or the guilt or innocence of the Defendant until it is finally submitted to you for your deliberation and decision.

You will well understand that if anything of that kind should occur and a mistrial is had, we would have this case to try over again and we don't want to have accidents from that standpoint and from two other standpoints. Be careful on the highways and around the home so that you will be able to come back at 1:00 and we won't be minus any jurors.

Keep your own counsel during this interim and come back at 1:00 Monday afternoon.

(Thereupon Court adjourned until Monday, June 6, 1960, at 1:00 p. m.)

* * * * *

(609) CHARGE OF THE COURT.

Jones, J.: Members of the jury it now becomes the duty of the Court to instruct you with respect to the law which it deems applicable to the facts in this case.

The defendant, William Presser, is on trial under an indictment returned by the Grand Jury of the United States for the Northern District of Ohio, charged with the violation of a certain law of the United States known as Title 18, Section 1505, which Section of the statute, so far as applicable here, provides that whoever corruptly obstructs or impedes, or endeavors to influence, obstruct, or impede the due and proper exercise of the power of inquiry under which such inquiry or investigation is being had by either House of the Congress of the United States, or any committee of either House or any joint committee **(610)** of the Congress shall be guilty of an offense against the United States.

The indictment returned by the Grand Jury, under which is charged the violation of the foregoing statute will be with you in your jury room so that you may have a full and detailed understanding of the Government's charge.

Briefly stated, it is the Government's charge, through this indictment, that from January 30, 1957, up to and including January 31, 1959, pursuant to certain Senate Resolutions a Senate Committee was authorized and directed to conduct an investigation and study of the extent to which criminal or other improper practices or activities are, or have been, engaged in, in the field of labor-management relations or in groups or organizations of employees or employers, to the detriment of the interests of the public, employers or employees, and to determine whether any changes are required in the laws of the United States in order to protect such interests against the occurrence of such practices or activities, and that the Committee was at all times mentioned **(611)** duly conducting such investigation and study, as the defendant William Presser well knew;

That pursuant to procedure adopted and in accordance with Resolution, the Committee Chairman or other member of the Committee designated was authorized and empowered to issue subpoenas for the attendance of witnesses and the production of memoranda, documents and records;

That in accordance with the Resolutions and rules, a subpoena, copy of which is incorporated in the indictment, was issued and served upon Teamsters' Joint Council 41, at Cleveland, Ohio, an affiliate of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the defendant William Presser well knew;

That such subpoena was dated March 19, 1957—which was clearly a clerical error and should have been 1958—and was duly served on Joint Council 41 on March 21, 1958, by personal service at Cleveland, Ohio, upon the defendant William Presser, President of Joint Council 41, to produce before the Committee its records for the period from January 1, 1949 to January 1, **(612)** 1958, which records were extensively enumerated in the subpoena to which reference is hereby made.

The indictment further charges that on or about and between September 9, 1958 and September 13, 1958, the defendant William Presser, unlawfully, wilfully and knowingly did corruptly influence, obstruct and impede and corruptly endeavor to influence, obstruct and impede the due and proper exercise of the power of inquiry under which the Committee was conducting the aforesaid investigation and study, and that he, William Presser, did so by the following acts: that he did alter, deface and tear and partially destroy, conceal and withhold from the Committee a certain invoice of the Rudolph Deutsch Industrial Sales Company, dated December 8, 1955, designated by number 1670 and addressed to Teamsters' Joint Council 41, well knowing that said invoice was a record of Joint Council 41 which bore a reasonable relation to the subject matter of the Committee's inquiry and was relevant to it, and was required to be produced to the Committee under and in accordance with the subpoena set forth herein.

(613) Further, it is charged that the defendant William Presser did wilfully and knowingly corruptly obstruct and impede the due and proper exercise of the Committee's power of inquiry by concealing and withholding from the Committee an envelope with the notation "Christmas List" inscribed thereon and a memorandum containing a list of names with various items of merchandise or amounts of money written next thereto, well knowing that said envelope and memorandum were records of Joint Council 41 which bore a reasonable relation to the subject matter of the Committee inquiry and were relevant to it, and required to be produced to the Committee under and in accordance with the subpoena as set forth.

The defendant, heretofore, has entered a plea of not guilty to this indictment. That plea of not guilty puts in issue all of the material and essential elements necessary to constitute the offense charged and places the burden upon the United States to establish his guilt beyond a reasonable doubt.

You will note that in criminal cases the (614) rule respecting the requirements of proof is somewhat different than that which perhaps you may have been instructed or understood applies in civil suits between individuals. In such cases the party holding the affirmative, as the Government is here, may prevail if he sustains the issue by a preponderance, or by the greater weight of the evidence, but in a criminal case it is the law that the evidence required for conviction shall not merely outweigh that tendered by the defense but the United States is required to establish the guilt of the accused by substantial and legal evidence beyond a reasonable doubt.

No presumption nor inference of guilt is raised or created against the defendant by the returning of this indictment. The indictment is not evidence but simply sets forth the charges made by the Government. Under the law the defendant is presumed to be innocent of the offense charged in the indictment, and that presumption of innocence goes with him throughout the trial and until the Government, by substantial and affirmative evidence not only has overcome that presumption of innocence, but has established (615) his guilt beyond a reasonable doubt. That does not mean or require proof beyond the possibility of a doubt. Absolute certainty is seldom, if ever, attainable in human affairs; but in cases of this character the evidence must be of such convincing force and effect as to produce in the minds of the jury a conviction of guilt to a moral certainty. Not only must the evidence adduced on the part of the United States overcome the presumption of innocence, but it must exclude every other reasonable hypothesis except that of guilt.

If a fair, candid and impartial consideration of all of the evidence satisfies your minds of guilt beyond a reasonable doubt, a mere ingenious, artificial doubt is of no avail. But if the material facts, without which guilt cannot be established, fairly may be reconciled with innocence, a reasonable doubt is then said to exist. And if from proven facts, natural inference reasonably may be drawn, either favorably or unfavorably to the defendant, then the defendant is entitled to the benefit of such favorable inferences. In other words, if the evidence and proper inferences be found by you (616) to be as consistent with innocence as with guilt, the defendant is entitled to an acquittal.

It is a moral certainty and not absolute certainty which the law sets up as the standard by which the evidence is to be judged. To put it another way, the evidence must produce in your minds an abiding conviction to a moral certainty such as you would be willing to act upon without hesitation in important affairs of life as they concern yourselves. If it does produce that conviction to a moral certainty of guilt then you no longer entertain a reasonable doubt as to guilt; if the evidence does not produce such conviction in your minds then you do entertain a reasonable doubt, and it would be your duty to acquit.

Congress is within its powers and was within its powers and function to conduct inquiries and investigations into subjects upon which it is empowered by the Constitution to legislate. It was acting within the scope of its powers in conducting an inquiry in respect of unlawful activities in labor-management relations. However, its inquiries are required to have a reasonable relation to the subject of (617) the inquiry, and the evidence should be relevant to the subject and purpose of such inquiry and investigation.

Briefly stated, it is the Government's contention that evidence of gifts being sent to public officials, political leaders or other persons such as those mentioned by Senator McClellan in his testimony, was material, relevant and of value for the Committee to have in conducting its inquiry and investigation into the use of Union funds and other practices relating to labor-management matters and that the Deutsch invoice and the list of names charged to have been defaced and withheld was such relevant evidence and that the Committee's inquiry thus was unlawfully obstructed and impeded, as charged in the indictment; and that the defendant, with such knowledge, tore or defaced the invoice by taking the names of the recipients therefrom and also withheld an envelope containing a list of names referred to and that by such act and conduct he corruptly, wilfully and unlawfully obstructed and impeded the due inquiry and investigation of the Committee. If the Government establishes these facts in the (618) manner I shall instruct you it is required to do, and as charged in the indictment, its case would be made out. It is essential that each element of the offense charged must be established in the manner stated, to warrant a verdict of guilty.

The essential elements, as applicable to this case, as I view them, are:

That the defendant William Presser, on or about or between September 9, 1958 and September 13, 1958, unlawfully, wilfully and knowingly did corruptly influence, obstruct and impede and corruptly endeavor to influence, obstruct and impede the due and proper exercise of the power of inquiry under which the Committee of Congress was conducting the aforesaid investigation and study by altering, defacing, tearing and partially destroying, concealing and withholding from the Committee an invoice of the Rudolph Deutsch Industrial Sales Company, dated December 8, 1955, designated by number 1670 and addressed to Teamsters Joint Council 41 well knowing that said invoice was a record of Joint Council 41 and that it bore a reasonable relation to the subject matter of the Committee's inquiry **(619)** and that it was relevant to it and that it was required to be produced to the Committee under and in accordance with the subpoena herein set forth;

And further, that William Presser did conceal and withhold from the Committee an envelope with the notation "Christmas List" inscribed thereon and a memorandum containing a list of names with various items of merchandise or amounts of money written next thereto, well knowing that said envelope and memorandum were records of Joint Council 41, and which he well knew bore a reasonable relation to the subject matter of the Committee inquiry and were relevant to it, and that they were required to be produced to the Committee under and in accordance with the subpoena referred to.

To do an act corruptly and wilfully means an act done knowingly, unlawfully, with a bad motive, and with the intent and purpose as charged here of obstructing and impeding the Committee of Congress from obtaining evidence relevant to the inquiry being made and, further that it was known by the defendant to be relevant to the inquiry being made and required to be (620) produced under the subpoena.

To support the issues and establish the elements of the offense charged, the Government called Senator McClellan who testified as to his background and how, finally, he became a Member of the United States Senate from Arkansas and Chairman of some of its committees, particularly with reference to the Chairmanship of the Committee appointed for the purpose of investigating and inquiring into labor management relations to find out and determine whether there were improper practices in labor-management relations under a Resolution passed by the Senate. He testified as to the matters to be covered in the inquiry and of the authorization to have subpoenas issued for evidence which would be of help in such an investigation and inquiry; that the Committee was interested in the expenditure of, or misuses of Union funds; the relationship between labor and management in the way of gifts to those who were prominent in official life, or had run afoul of the law. At the particular time in question here they were interested in investigating the Teamsters Union and determined to conduct an investigation (621) in the Ohio area with respect to the Local and affiliates of the Teamsters Union.

He testified that Sheridan was sent into Ohio for the purpose of such investigation, and that, in his opinion, it was of interest to the Committee to know the names of persons to whom gifts were to be sent, and the use of Union funds therefor, as pertinent to the inquiry being made.

Walter Sheridan, investigator for the Select Senate Committee testified to coming out to Ohio on behalf of the Committee on September 8, 1958 for the purpose of interviewing prospective witnesses and examining documents that might have some bearing on the matters being inquired into by the Committee in connection with the Teamsters Union. After some preliminary work, he did have a subpoena issued to Joint Council 41, calling for records enumerated therein and personally served the subpoena on Presser on September 9th when he went to the office of Joint Council 41 with the subpoena and for the purpose of looking at the files of the Local; he talked with defendant Presser and told him he wanted to look over the records referred to (622) in the subpoena; that Presser did make the records available to him and while examining one of the files he found the Deutsch invoice with respect to the champagne buckets containing a list of names of the persons to receive them, eight in number; also, that in the file he found an envelope marked "Christmas List" in which the invoice had been contained, and, also, in the envelope was a list of persons. While there, he made a copy of the material contained in the invoice, together with the names and that copy has been marked for identification and received in evidence. Expressing a desire to take the files with him, Mr. Presser withheld them and said he wanted to make photostats, rather than to permit the files to be taken out with no copies or duplicates available. Mrs. Passalaqua was present during the time Sheridan was at the office, and when he had given the file to Presser, he testified that Presser placed it on a surface within his private office, which later turned out, according to the testimony of both Mrs. Passalaqua and Presser, to be the top of a television set. Sheridan left the office, with the understanding that he would later return after (623) the photostats had been made. He returned on September 13th to the Joint Council 41 offices and asked if he could pick up the records. He found that no photostats had been made but defendant Presser reached inside his office and handed him the files, stating he had not done anything with them. Upon examination of the files Sheridan noticed that the Deutsch invoice had been torn since the time he first saw it and that the list of names contained thereon was missing, as well as the envelope marked "Christmas List" containing the list of names he had seen at the earlier visit. He told Presser there were some things missing but Presser said he had not touched the files. After leaving the Joint Council office he went shortly thereafter to the Rudolph Deutsch Industrial Sales Company office and found a duplicate of the invoice, which is Exhibit 13, and also learned, through Mr. Donald Feder of that concern, that the eight champagne buckets had been purchased and paid for by Joint Council 41.

There appeared to be a mistake of the date of the subpoena, which I mentioned earlier, which was not material, but clearly a typographical (624) error, being March 19, "1957" which should have been "1958."

Donald Feder of the Rudolph Deutsch Industrial Sales Company testified in respect of the records in his office, identifying the sales invoice showing the sale of the eight champagne Masters, or buckets as they have been called, stating that the original sales invoice was a white sheet of the same size and dimension as the duplicate. He testified that Charles Schaeffer was the salesman who sold the buckets to Joint Council 41. Mr. Feder also testified respecting the purchase of the eight buckets from the Ami Company and of the Ami Company's records respecting the engraving of the names of the recipients.

Fred Miller of the F. B. I., expert in examining of writings and papers, testified respecting his experience; that he had examined the original Deutsch invoice to find if there were any alterations on the surface of the paper or otherwise, where the tear had taken place. It appears that the white original invoice and the duplicate were identical in size and dimension and numbers but, at the place where the portion (625) had been torn, the names of Beck and English were on the carbon copy above the line of the tear. Mr. Miller, upon his examination found there had been an alteration on the surface of the white original invoice at the place where the names of Beck and English appeared on the carbon, and in his opinion there was evidence of an erasure of names.

Michael Cozza, Certified Public Accountant and attorney for Joint Council 41, testified respecting his appearance before the Committee with papers and records which had been subpoenaed and which he identified, and that he had power of attorney signed by Mr. Presser, and identified certain exhibits.

Mrs. Passalaqua testified as to being secretary for Joint Council 41 and for Presser since he was President in 1953; she testified as to how the files were kept in a metal cabinet behind her desk and as to her duties as secretary; that she was present when Sheridan came in; testified as to Mr. Presser making the files available; that when Sheridan started out with the files of papers, that Mr. Presser had said not to take the papers until they were photostated; **(626)** that Presser took the files and placed them on top of a television set in his office; that she had seen the files on top of the television set for several days thereafter; that they were not photostated so far as she knew. She testified that she did not tear, or erase anything and made no alterations of the invoice or any other papers. She testified that Presser went out of town the day after Sheridan's first visit—that she received a phone call from Sheridan to see if the photostats were completed or whether he could pick up the files.

Ann Madio, a part-time secretary for Joint Council 41, testified that she had been employed at various times but that she never saw these files or the invoice or any of the other papers before.

Mrs. Tavensky, an auditor with Cozza and Steuer, testified that she audited the books of Joint Council 41 but knew nothing about the invoice involved in this case.

Some question had arisen earlier as to whether Sheridan had been in Cleveland on the dates he testified that he had been to the offices of Joint Council 41 but, in view of the testimony **(627)** of defendant Presser, I see no point in referring to the flight coupons presented by the sales representative of Capital Airlines. Defendant Presser testified that Sheridan was in his office first on the 9th of September, 1958 and the next time on the 13th day of September, 1958.

On behalf of the defendant, Presser took the stand in his own behalf, testifying to his early life and schooling and the history of his employment down to the time that he became President of Joint Council 41 in January, 1953;

that he had had 34 years of experience on picket lines; that when he became head of the Council it was in poor financial condition, with few benefits for employees and that he had accomplished very considerable in building up the financial affairs of the Council, as well as providing for welfare benefits and matters for the improvement of the condition of members; that his duties as President of Joint Council 41 were to help negotiate contracts and settle disputes. He testified to Sheridan coming to his office on the morning of September 9, 1958 with the subpoena calling for several items and that he told Mrs. Passalaqua to open the files and records. He **(628)** testified that his predecessors had sent out Christmas presents, which seemed to be the normal procedure, at least so far as he was informed, when he became President. He testified he had no recollection of having seen the invoice which is in question here and did not know it was in the file. He did testify that Sheridan wanted to take some of the data with him but that he, Presser, suggested having photostats made as otherwise he would have no record or receipt for the files. He further testified that Sheridan departed and told him he was leaving town for two or three days but would return. He testified that he did place the file which he had taken from Sheridan on top of the television set in his office and left an order to have the papers photostated, which it appears was never done. He then testified that he went to Washington that day and returned on the 12th of September; that when Sheridan came in to the office around noon on the 13th of September and asked for the files, that he picked up the file from the top of the television set and handed it to Sheridan; that a minute later Sheridan accused him, or someone, of destroying a piece of paper and he **(629)** was angry and walked out without giving a receipt for the file; that he, Presser, did not know what was in the file; that he had no reason for seeing the invoice after the bill had been paid; that gifts or presents had been sent at Christmas time in subsequent years. He denied specifically that he had ever torn the invoice, or ever knew that the invoice was in that file at either time

Sheridan came into the office, nor did he ever erase anything from the invoice.

In his behalf six witnesses, persons engaged in the trucking business and one in home furnishings, were called to testify to the good character and good reputation of Presser in the trade and among the people with whom he came in contact.

In rebuttal, Mr. Bodmer of Washington, representing the Chesapeake and Potomac Telephone Company, produced slips indicating that there had been long distance person to person telephone calls between James Hoffa and the defendant Presser on September 11th, 1958, two calls, I believe, on that day, one to the office and one to Presser's home. This evidence was to rebut the claim that Presser had gone to Washington for two or three days following the first visit of Sheridan to his (630) office.

That is by no means all the evidence offered either by the Government or by the defendant but I have undertaken briefly to summarize it to draw your attention to the testimony of the respective witnesses. I have not undertaken to give any particular phase of the evidence favorable or unfavorable to the defendant. You will consider all of the evidence offered by both the Government and the defendant in considering and reaching your conclusion and verdict.

It is in evidence that eight champagne buckets were ordered from the Rudolph Deutsch Industrial Sales Company and paid for by Joint Council 41 in December, 1955, directed to be monogrammed and sent to eight certain persons named in the invoice and list referred to in the indictment, including public officials, political figures and other Union officials. It is not material to prove whether the buckets actually were received by any of the persons, or that any one of them knew they were to be the recipient of a monogrammed champagne bucket. The questions are, did the defendant corruptly, wilfully and intentionally deface the invoice, or withhold the (631) list from the envelope referred to for the unlawful purpose of obstructing or impeding the Congressional Committee from securing the complete invoice and list, and was the whole or complete invoice and the list enclosed in the envelope relevant to the inquiry being made by the Committee and to records included in the subpoena issued?

While there is no great or substantial, material variance in the testimony of Sheridan, Mrs. Passalaqua and the defendant Presser himself as to matters occurring in Presser's office on September 9th and 13, 1958, or as to the disposition and handling of the file containing these records at that time, there is no direct evidence that the defendant tore or defaced the invoice or withheld the list from the envelope in question, or that anyone saw him or anyone else do so. The Government relies upon what it asserts are natural inferences and circumstances reasonably to be drawn from proved facts in evidence pointing directly to and establishing beyond a reasonable doubt that the defendant defaced the invoice and withheld the list from the envelope.

(632) In addition to evidence asserted by the Government as tending to show motive on the part of Presser for defacing the invoice and eliminating and withholding the names of persons to receive the buckets, the facts relied upon by the Government as supporting natural and reasonable inferences to be drawn from them and calling for the application of the rule respecting circumstantial evidence and its effect are that according to Sheridan's testimony, as well as that of Mrs. Passalaqua, the file containing the records in question was taken from Sheridan by Presser on September 9th, 1958, and placed on the top of a television set in his, Presser's, office where it remained for some days; that when Sheridan returned on the 13th of September, 1958, the same file was produced by Presser from the top of the television set in his office and handed to Sheridan, photostats not having been made.

The inference sought to be drawn by the Government and asserted to be supported by circumstantial evidence, is that since no one except Presser had or handled the file containing the records in question from the time of Sheridan's (633) first visit on September 9th until he returned and received the file from Presser on the 13th, it is reasonable to conclude that Presser made the alterations in the invoice.

In a criminal case the evidence may be either direct or circumstantial, or both. If a witness sees, knows and testifies to the commission of the ultimate act to be proven, that is positive or direct evidence. But it is not always possible in criminal cases to establish guilt by direct and positive testimony alone, nor is it necessary, and the law provides that circumstantial evidence, where it is sufficient to satisfy the mind beyond a reasonable doubt, shall justify a conviction. Circumstantial evidence is often the most convincing; it is legal and competent in criminal cases, and if it is of such character as to exclude every reasonable doubt, that is every reasonable hypothesis than that of guilt, it is entitled to the same weight as direct testimony. Circumstantial evidence in the eyes of the law, in criminal cases, means the proof of such facts and circumstances connected with or surrounding the commission of the offense charged, as tend (634) to show the guilt or innocence of the party charged, and if these facts and circumstances are sufficient to satisfy the jury of the guilt of the defendant beyond a reasonable doubt, then such evidence is sufficient to authorize the jury in finding a verdict of guilty.

In addition to proving that the defendant defaced or withheld the records charged, it is required that the Government prove that the records or papers referred to were relevant to the inquiry the Committee was making—that is, that they bore a reasonable relation to the subject of the inquiry and that the defendant Presser knew this and knew that they were subpoenaed for that purpose.

While we cannot look into the mind of a person and tell what he knows, yet whether a person has knowledge of the unlawful character of the thing he does may appear from the evidence of the acts and conduct of the person in the situation, together with all the circumstances in evidence and the reasonable inferences to be drawn from the acts and conduct of a person.

It will be for you to say from the evidence on the subject whether the sending of the gifts (635) by the Joint Council 41 to public officials, political leaders and other controversial persons of supposed influence, or questionable reputation, such as done by Joint Council 41 through the defendant, its President, was a type of practice relevant to the inquiry and investigation being conducted by the Committee under the Senate Resolution; whether the defendant, with knowledge of the function and purpose of the Committee, and of the relevancy of the names of the recipients of the gifts admitted to have been ordered and paid for by his Union, defaced the Deutsch invoice by tearing off a portion containing the names of the recipients, and withheld the names of the Christmas List with the corrupt and unlawful intent and purpose of obstructing and impeding the Committee's inquiry. That the Committee might have secured these names and other information relative to the gifts by other means is not material and would not furnish absolution to defendant if you find that he did what the indictment charges.

If you believe from the direct and circumstantial evidence, beyond a reasonable doubt, that defendant did deface, tear, or (636) withhold the records referred to, and if you believe that he did, and did it with knowledge that they were relevant to the inquiry being conducted by the Committee of Congress and subpoenaed for that purpose, and that they were defaced or withdrawn by him wilfully and with the purpose corruptly to obstruct and impede the Committee from obtaining the information contained in the records, the defendant would be guilty of the offense charged. If you do not so find he would be entitled to acquittal.

The Government contends that the defendant had a motive for defacing and withdrawing these records in that they contained the names of public officers, political leaders and other persons of questionable reputation to whom champagne buckets had been ordered to be sent. The Government is not concerned with whether in each instance the buckets were received, nor is it material whether they were received. The Government's charge is that the defendant defaced or withheld records which showed the buckets had been ordered to be sent to certain public officers, political persons and others, and that this information was relevant and (637) pertinent to the inquiry and investigation being conducted by the Committee and that the defendant knew this and that his motive and purpose was unlawfully to obstruct and impede the inquiry in that regard.

Evidence has been introduced having for its object to show that the defendant has enjoyed a good reputation for honesty and integrity among persons who know him, and also that in the opinion of such persons who have thus known him, he possesses and has enjoyed a good character for honesty and integrity. This evidence is proper to be considered by you. The law permits persons charged with offenses to produce before the jury evidence of this character, and it is for the jury to weigh it and to determine the weight which should be given to it under all of the circumstances of the case. It is the view of the law that a person who has enjoyed a good reputation for honesty and integrity and whose character in that regard previously has been good, is less likely to commit an offense or engage in a career of crime contrary to his reputation and character, than a person not (638) possessing that reputation and character. The weight of that inference, however, is for the jury. It may even raise a reasonable doubt of guilt, when, except for such good reputation and good character, the evidence might otherwise be regarded by the jury as convincing beyond a reasonable doubt. Obviously, however, a person of good reputation or good character, has no more right to commit offenses than a person of bad character, and is no more to be exempted from responsibility for such an offense as he may commit. Indeed, in the matter of moral accountability, it might not be unfair to say, in the Scriptural phrase, that, "From him to whom much hath been given, much also shall be expected."

Statements of counsel to the jury are not to be taken as proof of any facts, they are proper to be made in the interest of explaining to the jury what the parties in the first instance expect to prove and what, in their opinion, the evidence in the case justifies you to believe. Closing arguments are their interpretation of the evidence submitted to you as bearing upon the guilt or innocence of the defendant. You are not (639) to deduce from anything said by me in this trial, or from any questions which I have asked or ruled upon, any particular attitude on my part with respect to the credibility of witnesses. You are not to assume that I have any view on the credibility of the witnesses or the guilt or innocence of the defendant.

The overruling or sustaining of objections by me is not to be taken by you as any indication of the guilt or innocence of the defendant. Counsel for the parties not only have the right, but it is indeed their duty, upon the introduction or the offer of evidence, to present whatever objections or motions they may feel are warranted under the circumstances.

Neither bias, prejudice nor sympathy should enter into your consideration of the case, or be the basis of your verdict. We are concerned here only with doing justice under the applicable law of the case. You are not responsible for any punishment which may be imposed upon the defendant, if found guilty, that is a matter within the Court's province and for which the Court accepts entire responsibility.

The weight and credit to be given the testimony (640) of the various witnesses is for you. In considering the weight and credit to be given the testimony you have the right to take into consideration the interest that any one of the witnesses, including the defendant himself, may appear to have in the outcome of the case, the witnesses' apparent candor; their demeanor on the stand; what, if any motive any witness may appear to have for telling the truth or for wilfully swearing falsely to a material matter.

You will have with you in your jury room all exhibits which have been marked for identification, offered and received as evidence in the case, together with forms of verdict for your use, depending upon your conclusion.

Take the case, members of the jury, give it your careful and mature consideration. After you have done so, your foreman, whom you will select upon your retirement, will execute such verdict as represents the concurrence of all twelve of your number, be it guilty or not guilty.

That is all I had intended to say to the jury. Are there any matters you feel I may have inadvertently misstated?

Mr. Kiernan: Nothing, your Honor.

(641) Mr. Knachel: I have no suggestions, your Honor.

The Court: Very well. The jurors may now retire, and the Bailiff will meet you—oh, wait a minute. I forgot the two alternates. The two alternate jurors will be excused from further consideration of the case. You understood that under the rules we are permitted to have two extra jurors just in case one or two might get sick along the way, because we have to have twelve to consider the case. When you are excused, do not enter into any conversation with anybody about any opinion you may have formed, do not talk with anybody about the case. Just keep your own counsel, do not talk with anyone until the matter is entirely over with and the jury has reached a verdict. But you are discharged at this time from further duty. The jury may now retire. The Bailiff will meet you in the jury room with the exhibits that have been marked and received in evidence.

(Thereupon the jury retired at 3:55 p.m.)

The Court: Counsel may take any exceptions out of the presence of the jury.

Mr. Knachel: The Defense has nothing, **(642)** your Honor.

The Court: Does the Government have any exception?

Mr. Kiernan: None, your Honor.

GOVERNMENT'S EXHIBIT 4.

Senate Resolution No. 326.

IN THE SENATE OF THE UNITED STATES,

May 24, 1960.

Whereas the Permanent Subcommittee on Investigations of the Senate Committee on Government Operations has in its possession certain records pertaining to an investigation dealing with William Presser, president of the Ohio Conference of Teamsters and president of Joint Council 41, and the International Brotherhood of Teamsters and its Locals and other affiliate organizations; which investigation was conducted in 1958 by the Senate Select Committee on Improper Activities in the Labor or Management Field; and

Whereas the Senate referred to the Department of Justice the transcript of the records on a citation of contempt of the Senate, which transcript contained allegations of the mutilation and destruction by said William Presser of certain records under subpoena by the Select Committee; and

Whereas the matter of U. S. against William Presser, now pending trial in the United States District Court, Cleveland, Ohio, charges said William Presser with obstruction of justice; and

Whereas the Department of Justice has requested the production of the records in this matter and has requested that Senator John L. McClellan, former Chairman of the Senate Select Committee on Improper Activities in the Labor or Management Field and present Chairman of the Permanent Subcommittee on Investigations of the Senate Committee on Government Operations, and, further, requested that Walter J. Sheridan, formerly an investigator for the Senate Select Committee on Improper Activities in the Labor or Management Field and presently an investigator for the Permanent Subcommittee on Investigations of the Senate Committee on Government Operations, to appear and testify in the above proceedings; and

Whereas by the privileges of the Senate no Member or Senate employee is authorized to appear or testify or to produce Senate documents but by order of the Senate: Therefore be it

Resolved, That the Permanent Subcommittee on Investigations of the Senate Committee on Government Operations is granted leave to permit the copying and presentation of certain records for examination in connection with the aforementioned court case, the records thereupon to be returned to the possession of the Subcommittee on Investigations; and be it further

Resolved, That Honorable John L. McClellan, a Member of this Body, and Walter J. Sheridan, an investigator employed by the Senate, are authorized to appear and testify in the above-mentioned proceedings.

Attest:

Felton M. Johnson
Secretary.

GOVERNMENT'S EXHIBIT 5-A.

Senate Resolution 221.

IN THE SENATE OF THE UNITED STATES,

January 29 (legislative day, January 27), 1958.

Resolved, That the select committee, authorized and directed to conduct an investigation and study of the extent to which criminal or other improper practices or activities are, or have been engaged in in the field of labor-management relations or in groups or organizations of employees or employers, to the detriment of the interests of the public, employers, or employees, and to determine whether any changes are required in the laws of the United States in order to protect such interest against the occurrence of such practices or activities, established by S. Res. 74, Eighty-fifth Congress, first session, agreed to January 30, 1957, as amended by S. Res. 88 of the Eighty-fifth Congress, first session, agreed to February 7, 1957, is hereby continued. Any vacancy in the select committee so continued shall be filled in the same manner as the original appointments were made under section 2 of S. Res. 74, Eighty-fifth Congress, first session, as amended.

SEC. 2. For the purposes of this resolution, the select committee, from February 1, 1958, to January 31, 1959, inclusive, is authorized, as it may deem necessary and appropriate to (1) make such expenditures from the contingent fund of the Senate: (2) hold such hearings; (3) sit and act at such times and places during the sessions, recesses, and adjournment periods of the Senate; (4) require by subpena or otherwise the attendance of such witnesses and production of such correspondence, books, papers, and documents; (5) administer such oaths; (6) take such testimony, either orally or by deposition; (7) employ on a temporary basis such technical, clerical, and other assistants and consultants; and (8) with the prior consent of the executive department or agency concerned and the Committee on Rules and Administration, employ on a reimbursable basis such executive branch personnel as it deems advisable; and further with the consent of other committees or subcommittees, to work in conjunction with and utilize their staffs, as it shall be deemed necessary and appropriate in the judgment of the chairman of the select committee.

SEC. 3. Notwithstanding the provisions of section 3 of S. Res. 74, Eighty-fifth Congress, as amended, the select committee shall report its findings, together with its recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than January 31, 1959, on which date the select committee shall cease to exist.

SEC. 4. Notwithstanding the provisions of section 5 of S. Res. 74, Eighty-fifth Congress, as amended, expenses of the select committee, under this resolution, shall not exceed $500,000 and shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee.

Attest:

/s/ Felton M. Johnston
Secretary.

GOVERNMENT'S EXHIBIT 5-B.

Senate Resolution 88.

IN THE SENATE OF THE UNITED STATES,

February 7, 1957

Resolved, That section 2 of S. Res. 74, Eighty-fifth Congress, first session, agreed to January 30, 1957 (establishing a select committee to investigate certain matters pertaining to labor-management relations) is amended by striking out the period at the end of subsection (a) thereof and inserting in lieu thereof the following: "governing standing committees of the Senate."

Attest:

/s/ Felton M. Johnston
Secretary.

GOVERNMENT'S EXHIBIT 5-C.

Senate Resolution 74.

IN THE SENATE OF THE UNITED STATES,

January 30, 1957.

RESOLVED, That there is hereby established a select committee which is authorized and directed to conduct an investigation and study of the extent to which criminal or other improper practices or activities are, or have been, engaged in in the field of labor-management relations or in groups or organizations of employees or employers to the detriment of the interests of the public employers or employees, and to determine whether any changes are required in the laws of the United States in order to protect such interests against the occurrence of such practices or activities.

SEC. 2. (a) The select committee shall consist of eight members to be appointed by the Vice President, four each from the majority and minority Members of the Senate, and shall, at its first meeting, to be called by the Vice President, select a chairman and vice chairman, and adopt rules of procedures not inconsistent with the rules of the Senate.

(b) Any vacancy shall be filled in the same manner as the original appointments.

SEC. 3. (a) The select committee shall report to the Senate by January 31, 1958, inclusive, and shall, if deemed appropriate, include in its report specific legislative recommendations.

(b) Upon the filing of its final report the select committee shall cease to exist.

SEC. 4. For the purposes of this resolution the select committee is authorized as it may deem necessary and appropriate to (1) make such expenditures from the contingent fund of the Senate; (2) hold such hearings; (3) sit and act at such times and places during the sessions, recesses, and adjournment periods of the Senate; (4) require by subpena or otherwise the attendance of such witnesses and production of such correspondence, books, papers, and documents; (5) administer such oaths; (6) take such testimony, either orally or by deposition; (7) employ on a temporary basis such technical, clerical, and other assistants and consultants, and (8) with the prior consent of the executive department or agency concerned and the Committee on Rules and Administration, employ on a reimbursable basis such executive branch personnel as it deems advisable; and further with the consent of other committees or subcommittees, to work in conjunction with and utilize their staffs, as shall be deemed necessary and appropriate in the judgment of the chairman of the select committee.

SEC. 5. The expenditures authorized by this resolution shall not exceed $350,000, and shall be paid upon vouchers signed by the chairman of the select committee.

Attest:

/s/ FELTON M. JOHNSTON,
Secretary.

GOVERNMENT'S EXHIBIT 6:

Rules of Procedure for the Senate Select Committee on Improper Activities in the Labor or Management Field.

(Unanimously adopted by the Committee on February 5, 1957.)

* * * * *

4. Subpenas for attendance of witnesses and the production of memoranda, documents, and records shall be issued by the Committee Chairman or by any other Member of the Committee designated by him in writing.

* * * * *

GOVERNMENT'S EXHIBIT 9.

Subpoena, March 19, 1957, Congress of the United States to Joint Council No. 41, International Brotherhood of Teamsters, to Produce Records.

UNITED STATES OF AMERICA

CONGRESS OF THE UNITED STATES

To Joint Council #41, International Brotherhood of Teamsters, Cleveland, Ohio, Greeting:

PURSUANT to a lawful authority, YOU ARE HEREBY COMMANDED to appear before the SENATE SELECT Committee on IMPROPER ACTIVITIES IN THE LABOR OR MANAGEMENT FIELD of the Senate of the United States, on Forthwith, 195 , at o'clock m., at their committee room Room 101, Senate Office Building, Washington, D. C., then and there to testify what you may know relative to the subject matters under consideration by said committee and produce your records for the period January 1, 1949 to January 1, 1958 including cash receipts and disbursements books, ledgers, cancelled checks, check stubs, day books, paid bills, records of loans, correspondence files, memoranda, payroll records, minutes of meetings, records of all bank accounts, opened or closed and any other records relating to Joint Council #41, International Brotherhood of Teamsters.

HEREOF FAIL NOT, as you will answer your default under the pains and penalties in such cases made and provided.

To ______________________ to serve and return.

GIVEN under my hand, by order of the committee, this 19th day of March, in the year of our Lord one thousand nine hundred and fifty-seven.

J. M. MCCLELLAN,

Chairman, Senate Select Committee on Improper Activities in the Labor or Management Field.

GOVERNMENT'S EXHIBIT 10.

Notes Taken By Walter J. Sheridan at Office of Joint Council 41.

Xmas List

12/8/55

#1670 Rudolph Deutsch Industrial Sales Co. 2nd. floor Bulkley Bldg.

Ma 12880

Ma 17873 Mrs Roman

Sold to Tstrs JC 41 12/8/55 2070 E. 22nd Clevel
8 Champagne Masters NFT 100.00 e. 800.00 Sale Tax 24.00

Beck
English
Hoffa
Brennan
Connell
Bender
Bliss
Dorfman

Pd 12/29 Check #8302

Other list
G Bender R Bliss

GOVERNMENT'S EXHIBIT 12.

Invoice, Dec. 8, 1955, Rudolph Deutsch Industrial Sales Company to Teamsters Joint Council 41.

RUDOLPH DEUTSCH INDUSTRIAL SALES CO.
Cleveland, Ohio

No. 1670

Date Dec. 8th, 1955

Sold to Teamsters Joint Council #41
Address 2070 E. 22nd
City Cleveland State Ohio
Buyer Bill Presser

Quan.	Description	Price	Amount
8	Champagne Masters NFT	100.00	800.00
	Sale Tax		24.00
			824.00

Pd 12/29 Check #8302

GOVERNMENT'S EXHIBIT 13.

Duplicate of Voucher in Files of Joint Council 41 Containing Eight Names.

RUDOLPH DEUTSCH INDUSTRIAL SALES CO.
Cleveland, Ohio

No. 1670

Date Dec. 8th, 1955

Sold to Teamsters Joint Council #41
Address 2070 E. 22nd
City Cleveland State Ohio
Buyer Bill Presser

Quan.	Description	Price	Amount
8	Champagne Masters NFT	100.00	800.00
	Sale Tax		24.00
			824.00

Beck
English
Hoffa
Brennan
Connell
Bender
Bliss
Dorfman

Salesman C.S.

DEFENDANT'S EXHIBIT A.

Subpoena, April 1, 1958, Congress of the United States to Joint Council No. 41, International Brotherhood of Teamsters.

UNITED STATES OF AMERICA

CONGRESS OF THE UNITED STATES

To Joint Council No. 41, International Brotherhood of Teamsters, Cleveland, Ohio, Greeting:

PURSUANT to lawful authority, YOU ARE HEREBY COMMANDED to appear before the SENATE SELECT Committee on IMPROPER ACTIVITIES IN THE LABOR OR MANAGEMENT FIELD of the Senate of the United States, on Forthwith, 195___ at ________ o'clock __m., at their committee room Room 101, Senate Office Building, Washington, D. C., then and there to testify what you may know relative to the subject matters under consideration by said committee. And produce all your records for the period January 1, 1949 to date including cash receipts and disbursements books, ledgers, cancelled checks, check stubs, day books, paid bills, records of loans, correspondence files, memoranda, payroll records, minutes of meetings, record of all bank accounts, opened and closed relating to Joint Council No. 41 Welfare Records, Building Association Records, Special Fund Records and the Teamsters Year Book.

HEREOF FAIL NOT, as you will answer your default under the pains and penalties in such cases made and provided.

To ______________________________ to serve and return.

GIVEN under my hand, by order of the committee, this 1st day of April, in the year of our Lord one thousand nine hundred and fifty-eight.

J. M. MCCLELLAN,

Chairman, Senate Select Committee on Improper Activities in the Labor or Management Field.

Production of records in Washington, D. C. will be waived if they are made available in Cleveland, Ohio, forthwith.

DEFENDANT'S EXHIBIT B.

Receipt, Feb. 2, 1959, Paul T. Riebesell, Auditor.

Received from Paul T. Riebesell, Auditor U. S. Senate Select Committee on Improper Activities on the Labor or Management Field, the following documents:

Joint Council No. 41

Cash Book for 1955, 1956 and 1957
Ledger sheets for Expenses for 1954
Payroll sheets for 1956
Bank statements—January 31, 1955 to December 31, 1956 of Central National Bank of Cleveland.
Minutes of Meetings
Period—January 21, 1954 through December 17, 1957 and August 14 and 18, 1958.

Checks

Stubs: No. 6684 through 10484 covering period December 31, 1953 through December 31, 1957

Cancelled checks: Nos. 6715 through 10463 covering period January 8, 1954 through December 27, 1957.

Checks missing:

6716-6776
6778-6786
6788-6793
6795-6848
6850-6862
6864-6881
6883-6886
6889-6892
6894-6895
7002
7226
7356
7645
8422
9017

10002
10371
10373
10379
10428
10436
10440-10442
10451
10461

Received from Paul T. Riebesell, Auditor U. S. Senate Select Committee on Improper Activities in the Labor or Management Field, the following documents.

Joint Council No. 41—Welfare Fund

Cash Book for 1957

Check stubs and cancelled checks Nos. 447 to 482—August 27, 1957 to November 25, 1957

Cancelled checks Nos. 429 to 432 and 434 through 446—December 14, 1956 to August 5, 1957

Bank statements of Central National Bank of Cleveland from December 31, 1956 to December 23, 1957.

Received from Paul T. Riebesell, Auditor U. S. Senate Select Committee on Improper Activities in the Labor or Management Field, the following documents.

Teamsters Council No. 41—Retirement Fund

Ledger sheets for 1954, 1955 and 1956

Cash book and ledger for 1957

Bank statements January 31, 1956 to December 17, 1957

Cancelled checks No. 104 to 147 drawn on The Capital Bank, Cleveland, Ohio—November 23, 1955 to December 9, 1957

Check Stubs No. 104 to 148 covering period November 23, 1955 to January 2, 1958

Cancelled check No. 1201 drawn on First National Bank of Akron, Ohio

Received from Paul T. Riebesell, Auditor U. S. Senate Select Committee on Improper Activities in the Labor or Management Field, the following documents.

Teamsters Joint Council No. 41 Building Association

Cash Book for 1954, 1955, 1956 and 1957

Ledger for 1953, 1954, 1955, 1956 and 1957

Check Stubs—No. 2260 to 2979 covering period January 4, 1955 to December 28, 1956

Cancelled checks No. 2977 to 3276 covering period December 28, 1956 to December 24, 1957

Checks missing

No. 2978
3139
3146
3147 through 3165
3264
3270-3271
3273
3277-3279

Bank statements together with the cancelled checks drawn on Central National Bank of Cleveland covering period August 31, 1955 to December 31, 1956

Bank statements from December 31, 1956 to December 31, 1957—Central National Bank of Cleveland

Payroll sheets for 1957

DEFENDANT'S EXHIBIT C.

Subpoena, Oct. 27, 1959, Grand Jury, United States District Court, District of Columbia to Joint Council 41.

UNITED STATES DISTRICT COURT
For the District of Columbia

The United States

vs.

In Re Possible Violation 18 U. S. C. 1505

Report to United States District Court House
Between 3d Street and John Marshall Place and on
Constitution Avenue NW. Room 3812, Washington, D. C

The President of the United States to

Any appropriate official
Joint Council #41
International Brotherhood of Teamsters
2070 East 22nd Street
Cleveland, Ohio

and produce before the Grand Jury the following original records of Joint Council #41: (1) minute book for the year 1958; (2) records showing travel of all officers for the period July 1, 1958, to December 31, 1958; (3) constitution and by-laws of Joint Council #41 in effect since January 1, 1955.

You are hereby commanded to attend before the Grand Jury of said Court on Wednesday, the 4th day of November, 1959, at 10:00 o'clock A. M., to testify on behalf of the United States, and not depart the Court without leave of the Court or District Attorney.

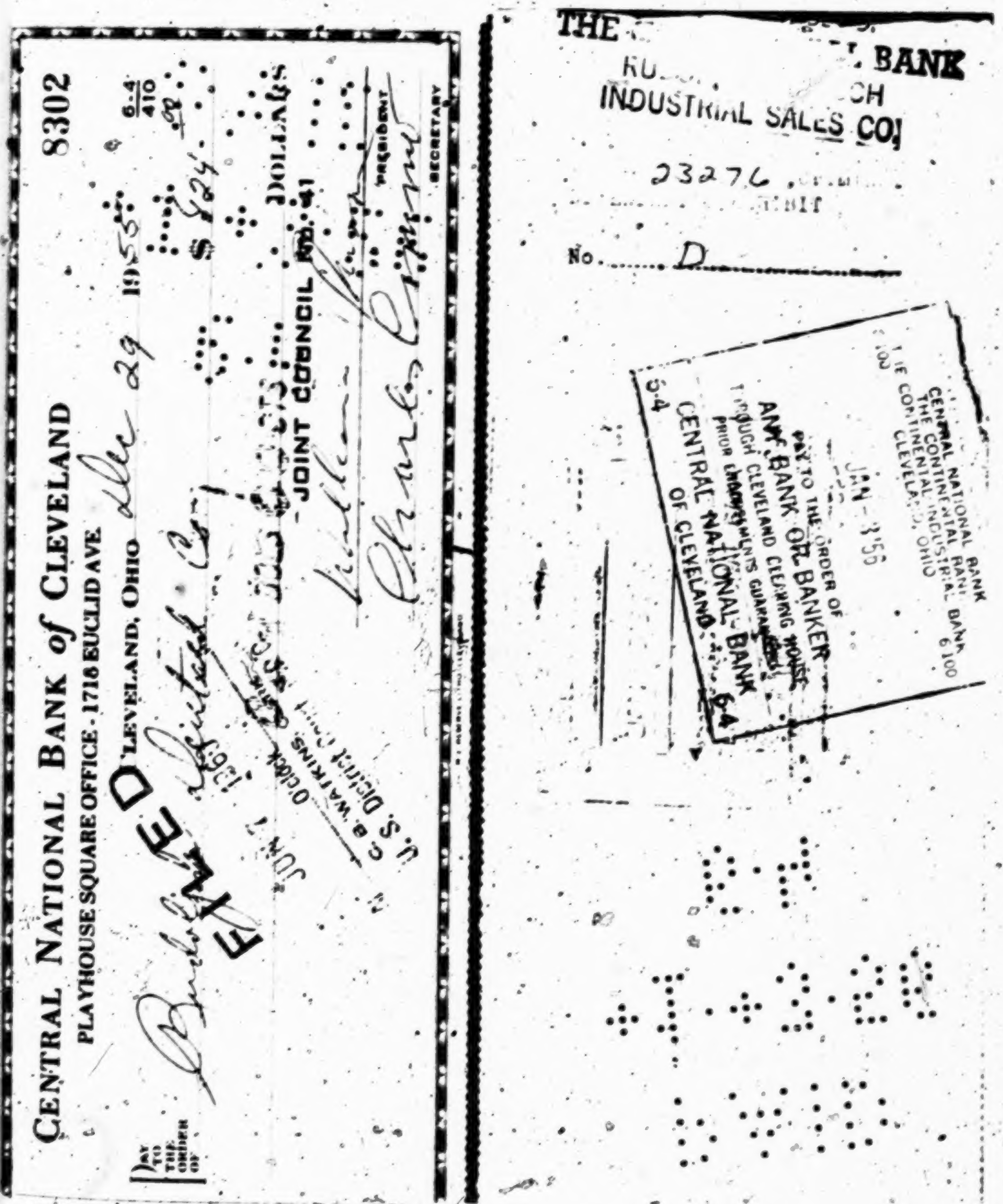
Witness: The Honorable David A. Pine, Chief Judge of said Court, this 27th day of October, 1959.

Harry M. Hull, *Clerk.*
By Laurence Proctor
Deputy Clerk.

Attorney for Department of Justice.

DEFENDANT'S EXHIBIT D.

Check, No. 8302, Dec. 29, 1955, Joint Council No. 41, to Rudolph Deutsch Co.



CENTRAL NATIONAL BANK of CLEVELAND
PLAYHOUSE SQUARE OFFICE · 1718 EUCLID AVE
CLEVELAND, OHIO Dec 29 1955

8302

6-4
410

PAY TO THE ORDER OF Rudolph Deutsch Co. $524.00

DOLLARS

JOINT COUNCIL NO. 41

PRESIDENT

SECRETARY

FILED
JUN 1 1961
o'clock
C. B. WATKINS
U. S. District Court

THE [illegible] BANK
RU[illegible] [illegible]CH
INDUSTRIAL SALES CO
23276

No. D

PAY TO THE ORDER OF
ANY BANK OR BANKER
THROUGH CLEVELAND CLEARING HOUSE
PRIOR ENDORSEMENTS GUARANTEED
JAN 3 '55
CENTRAL NATIONAL BANK
OF CLEVELAND
6-4

CENTRAL NATIONAL BANK
THE CONTINENTAL BANK
CONTINENTAL INDUSTRIAL BANK
CLEVELAND, OHIO
6100

MOTION FOR JUDGMENT OF ACQUITTAL, OR IN THE ALTERNATIVE, MOTION FOR A NEW TRIAL.

(Filed June 13, 1960.)

Now comes the defendant and moves the Court for a judgment of acquittal on the ground that the evidence presented by the Government is insufficient to sustain a conviction, or in the alternative, the defendant moves the Court to grant a new trial for the following reasons:

1. The Court erred in denying defendant's motion for judgment of acquittal made at the close of the prosecution and renewed at the close of all of the evidence.

2. The verdict is not supported by substantial evidence.

3. The verdict is contrary to the weight of the evidence.

4. The Court erred in the admission and exclusion of evidence.

5. The Court erred in denying the defendant's motion for a mistrial.

6. The Court erred in denying the defendant's motion to quash the subpoena duces tecum, the alleged violation of which formed the basis of the indictment.

7. The Court erred in denying the defendant's motions to dismiss the indictment.

8. The Court erred in denying the defendant's motion to suppress and for the return of evidence.

9. The defendant was substantially prejudiced and deprived of a fair trial by reason of the following circumstances:

A. The continuous reference throughout the trial by the prosecution to the criminal investigations of the Senate Select Committee on Improper Activities in the labor management field and

B. Misquoting evidence to the jury in his summation of the case.

EDWIN KNACHEL,

Attorney for the Defendant.

MEMORANDUM ON MOTION FOR JUDGMENT OF ACQUITTAL, OR IN THE ALTERNATIVE, MOTION FOR A NEW TRIAL.

(Filed June 24, 1960.)

JONES, *J.*:

Full consideration has been given to all matters in the defendant's main and supplemental briefs made the basis of the motion for judgment of acquittal, or a new trial,—except as to motions and proceedings preliminary to trial, which I find no occasion again to consider.

It was incumbent upon the Government to establish the function and purpose of the Senate Select Committee and that the information which it sought to get bore a reasonable relation to prospective legislation which it was to recommend to Congress.

Senator McClellan's testimony had a two-fold purpose—to establish an element of the offense that the Committee was interested in the handling of Union funds and any unlawful or improper use of them, among which was regarded gifts to public officials and persons who were either controversial figures or had run afoul of the law. The other purpose was to demonstrate that what the Committee was doing was a matter of public record and, as such, the defendant would be charged with knowledge of what the Committee was doing and of the importance of knowing what practices the Teamster Unions were indulging in, including the use of Union funds for sending gifts to public officials and public characters. It was essential to bring home to the defendant, as a matter of public record, that the invoice recording gifts to public officials, public characters and others, of questionable character, since it was an element of the offense, that the defendant had such knowledge when he was alleged to have torn and defaced the invoice and withheld the Christmas list.

The Government had contended that the question of the relevancy of the gifts made by the Union was a question of law for the Court's determination,, however, I deemed it a fact question for the jury and so instructed the jury that the Government was required to establish as an element of the offense that the record of the gifts in question was relevant to the inquiry and investigation being made by the Committee in trying to determine whether legislation was required, and that the Government was required to prove that the defendant knew and understood that such evidence was relevant, and bore a reasonable relation to the matters being investigated by the Committee. This was the sole purpose of permitting the testimony of Senator McClellan on that subject.

Believing as I do that the Government was required to prove that the information on the invoice was material and relevant to the inquiry and investigation being conducted by the Senate Select Committee, and that the Government was required to bring such knowledge home to the defendant, it became necessary for the Government to show the nature and purpose of the inquiry, its relevancy to the matters being investigated, and that it bore a reasonable relation to legislation affecting the conduct of the Teamsters' Union and its use of Union funds. In this view of the matter there certainly could be no prejudice in Senator McClellan's testimony.

As a matter of reflection, I do not recall that the defendant in his testimony denied that he knew the gift list was relevant information, or that it bore a reasonable relation to the matters under investigation, he merely denied that he tore the invoice, or even knew that it was in that particular file at any time.

It has not been shown that there was anything unlawful in the method used by the Committee in issuing subpoenas duces tecum; and the subpoena here did not call for the defendant's personal or private papers.

My impression of the cogent evidence which very likely influenced the jury was the defendant's testimony which carried the implication that he could not have done anything to the invoice because he went to Washington the night of Sheridan's visit and remained until the 12th, the day before Sheridan returned to his office. However, the Government's rebuttal evidence of the person to person calls between Hoffa at Washington and the defendant's office, and a long call to his home on September 11th, had a telling effect as to the veracity of the defendant in his testimony. To a like effect is the clear implication in Salesman Charles Schaeffer's testimony that the defendant, in September, 1958, was interested in securing the duplicate copy of the torn invoice. (Defendant's brief does not set out fully Schaeffer's testimony about trying to secure the duplicate invoice for Presser, see pages 381 and 382 of the typewritten transcript.)

Except for these circumstances the jury well may have entertained a reasonable doubt as to the defendant's guilt. But, no one that witnessed the event could have failed to sense the climactic effect of this evidence on the jury. It seemed to me that this evidence more than anything else influenced the jury's verdict.

No objection was taken to the Court's summation of Senator McClellan's testimony, or that of any other witness, which I think covered only the relevant and material parts of it, and no exceptions were taken to the Court's charge. It was a typical jury case, depending, in part, upon circumstantial evidence. It is my judgment that the case was fairly tried and submitted to the jury with full consideration of every favorable rule and aspect to which the defendant was entitled, and was thus open to a verdict of acquittal if the jury so concluded.

Motion for judgment of acquittal, or for new trial, will be denied.

United States District Judge.

June , 1960.

The jury has spoken and there is not much more to say than has been said. The Congress evidently regarded offenses of this character as serious by providing heavy maximum penalties.

However, I do not believe that a drastic penalty is called for under the facts in this case. The offense did not involve violence, although it did indicate motive and some deliberation.

The case has received considerable public attention and the defendant has been the subject of wide publicity by newspaper stories and from proceedings in Congress—these matters, however, have nothing to do with any duty imposed upon this Court. A sentence judged to be commensurate with the offense charged, and the evidence presented, is the only consideration here. Taking into consideration that ordinarily, where no previous offense is present, persons sentenced are eligible for parole after one-third of the time imposed, it is my judgment that a sentence of 8 months adequately will respond to the requirements of this case. This sentence is not to run concurrently with any sentence heretofore imposed by any other court. This original memo should be attached to the memo re judgment or new trial denial, and is a part of the record in this case.

(Signed) Jones, J.

June 24, 1960.

ORDER DENYING MOTION OF DEFENDANT FOR JUDGMENT OF ACQUITTAL OR FOR NEW TRIAL.

(Entered June 27, 1960.)

Upon consideration,

It Is Ordered that the motion of defendant for judgment of acquittal, or in the alternative, for a new trial is hereby denied.

Jones,

United States District Judge.

JUDGMENT AND COMMITMENT.

(Filed June 27, 1960.)

On this 24th day of June, 1960 came the attorney for the government and the defendant appeared in person and by counsel.

It Is Adjudged that the defendant has been convicted upon his plea of a verdict of guilty having unlawfully, wilfully and knowingly corruptly influenced, obstructed and impeded and corruptly endeavored to influence, obstruct and impede the due and proper exercise of the power of inquiry of a Senate Select Committee on Improper Activities in the Labor or Management Field as charged and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of eight (8) months.

It Is Adjudged that the sentence herein imposed not be served concurrently with any sentence hereafter imposed by any other court.

It Is Adjudged that the execution of the within sentence is hereby stayed pending appeal.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Paul Jones,

United States District Judge.

NOTICE OF APPEAL.

(Filed July 1, 1960.)

Name and address of appellant:

William Presser
2525 Claythorne Road
University Heights, Ohio

Name and address of the appellant's attorney:

Edwin Knachel
1706 Union Commerce Building
Cleveland 14, Ohio

Offense:

Violation of Title 18, U. S. C. Section 1505.

Concise statement of judgment or order, giving date, and any sentence:

On June 24, 1960, the appellant was sentenced to a confinement of eight months.

Name of institution where now confined, if not on bail:

Upon the appellant's execution of a bond in the amount of $3,000.00, appellant was released and judgment stayed pending the notice of appeal.

The above-named appellant hereby appeals to the United States Court of Appeals for the Sixth Circuit from the above-stated judgment.

Dated: July 1, 1960.

Edwin Knachel,
1706 Union Commerce Building,
Cleveland 14, Ohio,
PRospect 1-6320,
Attorney for Appellant.

Of Counsel:

Hornbeck, Knachel, McLaughlin & Ritter.

No. 14,326.

IN UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee,

vs.

WILLIAM PRESSER, Defendant-Appellant.

CRIMINAL No. 23,276.

APPEAL FROM THE UNITED STATES DISTRICT COURT,
FOR THE NORTHERN DISTRICT OF OHIO,
EASTERN DIVISION.

Appellant's Supplemental Appendix—Filed November 12, 1960

EDWIN KNACHEL,
1706 Union Commerce Bldg.,
Cleveland, Ohio,

HORNBECK, KNACHEL, McLAUGHLIN & RITTER,
Of Counsel,

Attorneys for Defendant-Appellant.

RUSSELL E. AKE,
United States Attorney,

FRANK J. KIERNAN,
HARRY L. HUDSPETH,
Special Attorneys, Department of Justice,
Federal Bldg., Cleveland, Ohio,

Attorneys for Plaintiff-Appellee.

[File endorsement omitted]

[fol. 333]

ARGUMENT OF THE PROSECUTOR

The Court: We are ready now to hear counsel for the Government and for the defendant sum up and give you their interpretation of what the evidence shows in respect to the issues.

Mr. Kiernan, for the Government, you may open.

Mr. Kiernan: May it please the Court, ladies and gentlemen of the jury, Mr. Knachel and Mr. Cardinal:

I suppose it is usual to thank the jury for its very kind attention, and I certainly do. I also would like to ask you to overlook and excuse any outbursts which we might have had during the course of the trial. Certainly there was no intention, and that should not be allowed, to reflect adversely on the defendant.

Now, at the beginning of the case when I opened I told you that essentially the case was a simple story about an invoice and a sheet of paper; that that invoice and sheet of paper were of interest to the McClellan Committee investigating labor-management relations, and were pertinent to it; and that we would attempt to show what happened to this invoice and that piece of paper; that they were under subpoena; that the invoice was destroyed and the piece of paper concealed and withheld from the Committee.

We also said we would attempt to show through various facts and circumstances that the defendant William Presser was responsible for the withholding and the destruction, both of which, or either one of which, would constitute an obstruction of justice before the Senate Committee.

Now, I will briefly review the testimony of each witness first, and try to refresh your recollection, and then I will attempt to fit the story together into the Government's theory of the case.

First of all, we called Senator McClellan, and he testified concerning the Committee. This was more or less by way of background, so that you would understand the case a little better. He told you what the Committee was [fol. 334] interested in and, of course, the Senate resolution which was admitted in evidence also showed the same thing. The Committee was interested in investigating, and it had the task of investigating, unfair practices, criminal practices, in the labor-management field.

Now, he gave some background as to the way the Committee operated. I don't think it is important to go into it now. There has been no dispute over it. I'm pretty sure you understand it.

He did testify that the Committee was at that time interested in the misuse of Union funds, in racketeering in the labor field, and a lack of democracy in the unions, and attempts which might be made to influence public officials.

He testified concerning an interim report which the Committee had issued in March of 1958, some five or six months before the events alleged here occurred, and he explained to you that that Committee report did contain certain legislative recommendations.

Now, one of the reasons we went into that is to show that the Committee had a legitimate, legislative purpose, that it wasn't merely going out to raise dust, that it was investigating, and investigating facts, and that out of these facts it did eventually recommend legislation which would tend to cure the improper practices they had observed.

Also, he mentioned that that very report contains special findings with respect to the Teamsters Union. We didn't go into this to prejudice your minds against the Teamsters Union. That's not part of our case at all, because whether or not any of you have any feeling one way or the other about the Teamsters does not enter into the case and it should not be allowed.

The sole issue, of course, the sole reason for bringing it up was to show that the Committee was interested in certain individuals in the Teamsters Union, and that the report had been issued, and the probability that the defendant, Mr. Presser, would have known of the report and what the Committee was interested in.

Senator McClellan went on and testified that there was the torn document. On the stand he read at length from [fol. 335] Mr. Sheridan's testimony before the Senate. The purpose, again, of reading that testimony was not only to corroborate Mr. Sheridan's specific testimony, it was merely to show that the Senate was interested in those two documents and the particular names on them and, of course, eventually that since the one document was destroyed and the other withheld that in the Senator's opinion that did tend to obstruct the business of the Committee.

Senator McClellan also testified concerning the Bender group. That, you will recall, was a special group set up by the Teamsters Union for investigation from within, and that there was some reason to look into the relationship between Senator Bender and the Teamsters Union, especially here in Ohio, and that an investigation was conducted along those lines.

Our next witness was Mr. Walter Sheridan. Now, we went at some length into his background as an investigator. We brought out the fact that he had been with the FBI for some four years, and after that he was with the National Security Agency, an agency requiring a very high degree of clearance in order to work there. Our purpose, again, for going into this background was two-fold: first, we wanted to show that Sheridan was an experienced investigator, that he was a good one, and that the conclusions he would make could reasonably be relied on.

Sheridan testified concerning his trip to Ohio in April, when he served the subpoena on Mr. Presser. Of course, the purpose of this service on Mr. Presser, again, was two-fold. When he was served with the subpoena it put him on notice that the Committee wanted those documents. So we wanted to show his knowledge. That was one of the reasons which brought up that particular piece of testimony. The other reason, of course, was to show that the invoice and the memorandum were, in fact, under subpoena, and that there was a duty and an obligation to turn them over to the Committee.

Sheridan then testified that late in the summer of 1958, after the Bender Commission was set up, he was sent out here to Cleveland to investigate him, and as part of that [fol. 336] investigation, and also because certain files of the Teamsters Union had not been turned over—that would be Joint Council 41—he went to the offices of Joint Council 41 to review the files.

Now, there is absolutely no dispute in the case concerning the fact of Sheridan's visit. The defendant agreed on it and Mrs. Passalaqua, and Mr. Sheridan said he went there to the office and he reviewed the files. When he was leaving he turned them over to Mr. Presser. Four days later when he went back he got the files back again.

Sheridan testified further that when he went through these files he found the invoice in an envelope and also the sheet of paper; that he made extensive notes on the invoice; that when he was leaving Mr. Presser asked him to leave these records there so they could be photostated; that when he returned some three or four days later—four days later—the records were not photostated, they hadn't been photostated, and the invoice was torn and the list missing; he also testified, of course, you recall, that it was from Mr. Presser that he got the files when he went back.

On cross examination Mr. Sheridan testified that Mr. Presser did not ask him for any receipt. At that point there was a stipulation that certain records of Joint Council 41 were already in the Committee, those records being the check books which showed the payment to Rudolph Deutsch for the gifts.

Our next witness was Mr. Feder. The purpose of his testimony was to corroborate Sheridan's testimony, and that issue pretty much disappeared from the case eventually. We wanted to corroborate Mr. Sheridan's testimony that such a transaction really did take place. Of course, there is no question about it now. Also Mr. Feder explained to you how the torn invoice should have been the same size as the carbon copy which he had given Sheridan, and also the same as the fly leaf copy which was still in the Deutsch record. He also testified that the original would have contained the list of names.

Finally, the important part of Mr. Feder's testimony was that two days before Sheridan went there he had received a call from Charles Schaeffer.

[fol. 337] Our next witness, then, was Mr. Miller, the FBI Agent whose testimony, as you recall, was to the effect that this invoice had been picked up by the McClellan Committee, and you will recall his testimony that it came to his attention. He is an expert in the field of questioned documents. He subjected the document to numerous examinations, and the only thing he could find was that there had been an erasure. That, again, is an important point. It had been erased where two names appeared, the names, I believe, of Beck and English that had been right above the place where it was torn.

On cross examination he explained the probable reason why there was no effort made to get finger prints. He testified that in the summertime finger prints do not remain on paper more than two or three days, and also that in the normal course when you have a document that has been handled quite a bit there really isn't much sense in looking for finger prints on it.

Then we come to the hostile witnesses, first Mrs. Passalaqua. Somebody mentioned afterwards there was a question as to who was hostile. Actually, the question of hostility is a legal technicality. When we said she was hostile, we didn't mean she was mad at us, anything like that. It was merely that she was interested in the defendant's case, she worked for him and, naturally, she would be reluctant to appear and testify against him. So it was for the purpose of establishing that she was, perhaps in a technical sense a hostile witness, and so we were cross examining. You noticed during the course of the trial that there is a difference between the way you can question your own witness and the way you can question your opponent's witnesses. In questioning your own witness you are supposed to ask direct questions, not suggest any answers to them, whereas with the other side's witnesses, of course, you can cross examine.

Now, again, we called Mrs. Passalaqua for purposes of cross examination, and if I appeared rather grim, it certainly was not intentional. It probably was more due to the fact that we didn't know exactly what story she would tell and were rather intense about what she would say.

[fol. 338] Mrs. Passalaqua, of course, testified that she had been with the Joint Council 41 for nineteen and a half years. She testified that the door to Joint Council 41—that would be the door leading into her and Mr. Presser's office—was kept locked at all times, and that entrance was gained by means of a buzzer.

She also testified that the files were kept locked at all times when she was there, and that in the normal course anyone who had reason to look at the files would not merely go to the file cabinet and take them but would ask her for them. She also testified generally with respect to the office procedure, that if she made out a check today she would put today's date on it. Now, again, that wasn't her only testimony on the point. She did say there was an exception—I don't want to mislead you on that—but she testified in the normal procedure she would put the date of the day the check was made out.

She also testified that anyone who would go into Mr. Presser's office would be someone who had business there. This, again, of course, is an important point because if Mr. Presser is not in his office you could normally assume no one will have business there.

She testified to Mr. Presser's home phone number being EV 1-1515, and she also testified that the telephone number of the Joint Council was CHerry 1-7053. The phone numbers perhaps didn't seem of much importance to you, but if you recall our rebuttal testimony, Mr. Bodmer from Washington, having to do with long distance phone calls, you will recall he testified as to the toll slips which he produced; testified as to the calls from Hoffa in Washington, in the Teamsters Building, on the 11th, to Mr. Presser, one call to the office and one call to his home phone number.

She also testified concerning the time that Mr. Sheridan was leaving, that Mr. Presser told him not to take any files out of the office until after they were photostated, and that Sheridan said, "Fine, I'll be back," or something of that type.

She testified that the next day she saw those files on [fol. 339] the TV set in Mr. Presser's office, and she does not recall anyone else being there. She saw them the next day, and perhaps another time. She didn't touch them, however, and she didn't have them photostated.

She testified, of course, that she did not tear the invoice and had nothing to do with it. She also testified from the cash disbursements book of Joint Council 41 that there were approximately 35 Christmas presents given out in the year 1955. The reason for bringing this issue in, again, was not to prejudice the case against Mr. Presser, because perhaps some of these gifts would be proper anyway, if not all of them, but the point is that Sheridan testified he had seen some list and, of course, the fact that there were these Christmas presents given out at that time tends to corroborate Mr. Sheridan's testimony.

Then it was stipulated that the minutes of Joint Council 41 for the year 1955 showed no reference at all to the gifts. On cross examination Mrs. Passalaqua testified that Mr. Presser was out of town for a period, but she couldn't say how long. She testified that it was her handwriting on the invoice.

On redirect examination she testified that before the Grand Jury in Washington she had admitted she couldn't recall whether Mr. Presser was in town or not. Then, of course, she testified concerning the fact that checks were issued on the 9th, 10th, 11th and 12th of September, and that the check dated September 11, No. 11510 was Mr. Presser's salary check, that it was issued on the 11th, it was endorsed by him, and it cleared the Cleveland bank on the 12th after having first gone through the Teamsters Credit Union.

She also testified as to the authenticity of the letters written on the 9th and 10th, the only purpose of the letters being that they tend to show that Mr. Presser would have been in the office on the 9th—well, there was no dispute or disagreement on that—but that he would also have been there on the 10th.

We then called Miss Madio. She was the part-time girl who sometimes helps out at Joint Council 41. The purpose [fol. 340] of her testimony was, of course, to show whether she had anything to do with the destruction of the document. She testified she didn't.

Lillian Tavensky was the same thing. She was the employee of Michael Cozza, the auditor. She was the one who normally balances the books for Joint Council 41. She said she didn't destroy the document. Michael Cozza himself testified to the same thing.

Then we had a Mr. Donald Pfeiffer, the Ohio Conference man. He testified, you will recall, that the Ohio

Conference of Teamsters hired Mr. Bender for some purpose that is a little bit confused. Bender was hired by the Teamsters International as the head of this cleanup committee. That is not what we were making reference to with Pfeiffer. Prior to the time he was hired by the Teamsters International he was hired by the Ohio Conference of Teamsters—that would be Mr. Presser's outfit here in Ohio—for some purpose, undoubtedly legitimate. He was paid a check of $1,000, and he cashed the check. Now, subsequently he was hired by the Teamsters to clean up, and he wrote a letter to the Ohio Conference sending back the thousand dollars. That letter went to Mr. Presser's office and he forwarded it to Mr. Pfeiffer on the 9th of September. That's the very day Sheridan was in the office there.

The importance of this letter is to point up the fact that Bender returned the check because he felt that if he was working for the Ohio Conference at the same time that he was working on the clean up committee there would be an apparent conflict of interest and he didn't feel it was proper, so he returned the check. Now, this letter came to Mr. Presser's attention on the very day that Sheridan was in the office, and it undoubtedly would have the effect of putting him on notice, or giving him the idea that he now should be careful if there was a record of any transaction in the past that would tend to show any close relationship, and that, of course, would furnish a possible motive for his destruction of the document.

[fol. 341] Then we had Mr. Keesling of Capital Airlines who testified concerning the Airline tickets which tended to corroborate Sheridan's story that he came out here on the 8th, left on the 12th to go to Chicago and returned from Chicago on the 13th.

Finally, perhaps the most important witness the Government had, Mr. Schaeffer. He was the salesman who handled the transaction in the first instance with Mr. Presser.

Now, you will recall Schaeffer testified he had known Mr. Presser for 25 or 30 years, that they lived in the same neighborhood: that he testified that he remembered the champagne bucket transaction because at that time he was working for Rudolph Deutsch. Now, his entire period of employment with Rudolph Deutsch was only about six months, but he did handle that transaction.

He also testified, as did Mr. Feder, that when he left Rudolph Deutsch there was bad feeling, or bad feeling grew up sometime thereafter, and that as a result of this bad feeling they didn't contact each other at any time. Our reason for bringing that out was to point up the one time that he did contact them in September, 1958, and that call, he testified, was made to Rudolph Deutsch for the purpose of obtaining Rudolph Deutsch's copy of the records pertaining to the sale of these gifts. He testified that he made this call at the request of Mr. Presser.

Now, we were going into quite a rigmarole with the other witness trying to pin down the exact time of the call. The call, you will remember, was made about two days before Sheridan was there on the 13th, which would mean that it was during that period, between the very time that the invoice was destroyed, that Presser asked Schaeffer to attempt to get him the other copies pertaining to this gift.

The witness testified the records were not available to him, and he called Mr. Presser and told him they were not available, and Presser said, "Well, that's that."

Now then, the defendant took the stand himself. He admitted that before Christmas he had ordered champagne buckets, that he had ordered them through Charles [fol. 342] Schaeffer, and that there were about eight of them. He testified they had been received and paid for, but that he had no recollection of having seen the invoice since 1955 leaving, of course, the impression that he had no further interest in it. Yet three years later, as I have already pointed out, he calls up Mr. Schaeffer and tries to get the other copy of those records.

He also agreed that Mr. Sheridan was there on September 9th in the morning and he told Mrs. Passalaqua to let him look at the records. He testified that during the course of Sheridan's visit he did talk to him on one or two occasions, and finally when it came time to leave after work, towards the close of the day, he told Mr. Sheridan he was going to leave soon afterwards and how would they work it out, so Sheridan told him he was almost finished anyway, and soon afterward Sheridan went to take the records and someone said, according to Mr. Presser—he is not sure whether it was he or Mr. Sheridan—said, "Let's have the records photostated." Then he testified he took those records, placed them on the TV set in his office, and that he left word with Mr. Schenk, a business agent of Joint Council 41, to have the records photostated.

Then his testimony was, as you will recall, that he left town a few minutes after Sheridan left the office. He left, and he left town the very same evening, the 9th of September, and drove to Washington; that he stayed in Washington the 10th, the 11th, and came back sometime in the afternoon of the 12th.

He also testified, of course, that when he was in Washington he stayed in the same suite as Mr. Hoffa does at the Woodner Hotel; that Mr. Hoffa was probably there too, and that he would have seen Hoffa regardless of whether he had any business transactions to do with him or not, because as a matter of courtesy he always made it a point to call on Mr. Hoffa when he was in Washington.

Then, of course, he testified about Sheridan's visit on the 13th, which was a Saturday, and at that time he mentioned that Sheridan came in to Mr. Presser's office. He [fol. 343] testified about the buzzer system, that you have to knock on the door and someone on the inside has to ring the buzzer before you can get in. He testified that he picked up the file and handed it to Sheridan, that Sheridan was very nice and polite when he walked it. (sic) He testified that Sheridan sat down and checked through these files for a moment, and in a short while became very agitated and angry and said something to him about not trusting him; that he did ask Sheridan for a receipt at that time, and that Sheridan took the records. He testified he didn't see the invoice from 1955 until it was before the Committee, and said he did not tear or destroy it. He testified about people coming to see him in his office, in the course of business, and he mentioned the number of people who have keys, the postmen, watchmen, charwomen, business agents, and so on.

On cross examination he testified that he went to the International on the day he went to Washington, and the following day—that would be on the 10th and 11th—and that he saw Hoffa and English. He admitted on cross examination that he knew of the Committee's interest in Beck and, in his own words, knew that Beck had problems. The same went for Hoffa. The same went for Brennan.

Now, the purpose for bringing out whether or not Beck, Hoffa, Brennan or Dorfman, or anyone else, has a bad reputation is not so that it will reflect in any way on the defendant, and it shouldn't, because anyone who had been in the labor movement or any other movement where there would be people who might have a bad reputation, you couldn't help of necessity but have some contact with them. That was not our purpose in bringing it out, and we don't want it considered against the defendant in that way. The purpose for our bringing it out, you will recall Mr. Presser testified from the minutes of the Joint Council meeting of August 14, 1958, at the Carter Hotel, and his testimony was that on that day in August he was afraid that he might be fired from his job by the monitors, and that the cause of the firing could be an association with people of bad reputation. Now, we wanted [fol. 344] to show that some of the people in this organization did have a bad reputation, or at least what might be considered a bad reputation, and that this would be another motive for Mr. Presser destroying the document or concealing his association with them from the public.

He also testified, of course, that two funds were set up, one by the Joint Council and one by the Ohio Conference, each for $20,000, for Mr. Presser in the event he lost his job.

Now, this again, was not introduced for the purpose of prejudicing the case against Mr. Presser, but, again, to corroborate the fact that there was actually a fear on his part that he would possibly be fired, and this fear is borne out by the fact that some steps were taken to provide against that eventuality.

He testified about the Teamsters' housecleaning organization which was headed up by Bender, and they were interested, naturally, in that Commission. Then he testified from the clippings in the newspaper of the 6th, 7th and 8th, which clippings, as he testified, indicated on those days that the Committee was investigating Bender and was investigating Bender's connection with the Teamsters. These dates were just immediately prior to Sheridan's visit and, again, of course, would have put Mr. Presser on notice that he should look out for them, that perhaps there would be some relationship shown between himself and Bender—another motive for destroying the documents.

He testified that the minutes of 1953 did give him permission to use his own discretion in buying gifts, but were never made part of the by-laws, as far as he knew, hadn't ever, at any time, even been called to the attention of the rank and file.

The character witnesses, of course, we won't have to bother with. Then our rebuttal witness I have already mentioned, Mr. Bodner from Washington who produced the records which show that Hoffa called Presser on two occasions.

Now, the way in which this all fits in with our case, we won't have to do too much with the Committee, but that's because that was all brought out by Sheridan and [fol. 345] Senator McClellan, who testified about the Committee's activities, and its interest in racketeering, lack of democracy, influencing public officials, and so on; and, again, the destruction of the invoice and the concealment of the list would tend to obstruct the business of the Committee.

The question then comes up: what happened? Well, there is no question but that there was a document. Certainly there was a transaction. That's admitted by everybody, and Mr. Presser was the one who handled it. An invoice was issued. The invoice would have the list of names, and the invoice would go to Joint Council 41.

Proof that it went to Joint Council 41 is the fact, first, it was paid and, second, it would be the normal course of business to send it there and, finally, as Mrs. Passalaqua testified on cross examination, she identified her handwriting as being on the invoice. So obviously it did go there.

The invoice had this list of names. Now, I don't think there can be any question about that. Feder's testimony showed that the list of names would have appeared on that invoice in the normal course. Then Sheridan's testimony, Sheridan was there on the 9th, and he took the notes which are in the exhibits in this case. Those notes list the names on the invoice in the same order that they appeared, and that they should have appeared there. Sheridan would have had no knowledge before he went there, before he saw that invoice in the files of Joint Council 41, as to the fact that these gifts were bought for these various individuals, because it wasn't until four days later that he got the duplicate copy of the invoice from Rudolph Deutsch. So I don't think there can be any question in anyone's mind but that there was an invoice in the records of Joint Council 41, and that that invoice did contain a list of names. Of course, he also testified about the other list, that sheet of paper with more names on it. This again, is corroborated by the notes that he took showing that he had gotten some of the first names or first initials from that other list which did not appear on the invoice. [fol. 346] The next thing we know is that this list of names was removed from the invoice. Again, there can't be any question about that. You have seen the invoice here in front of you. Of course, it is obvious that the names are not there now. Sheridan testified that they were removed at the time he went back to get the record on the 13th.

A very important part of our case too—it may not have seemed so at the moment—was the testimony of the FBI Agent. This testimony clearly shows that this list of names was removed by some human agent. That could not have been an accident. Why? We say to you that it was a purposeful act, taking off that list, and the thing that I believe ties that down more than anything else is the fact that there was an attempt to erase. It is always possible a document can get torn easily, but it is not humanly possible than (sic) an erasure can be made on a document unless someone does it. So this made it very apparent, I believe, what was in the defendant's mind. He wanted to get all of those names off, and he attempted to erase them but undoubtedly tore the paper in erasing. A man normally isn't as good at that type of thing as a woman would be anyway. Then he just ripped the rest off, tore the document across the bottom.

Now, what this leads to is the question of who did it. The Government's evidence showed—and I believe, again, there is no dispute on this—that the documents were handed to Mr. Presser and obtained back from him. Our evidence shows that the invoice was in perfect condition when these records were given to him. When he gave them back the invoice was torn, the list was missing. Now, you can tell from your own experience in life that this gives rise to a reasonable inference that Mr. Presser was responsible for the destruction of the record and the cutting away of the other one. It is a rebuttable presumption, but there is that inference.

The next question we come to is motive. People don't do things of that type without a reason. Mr. Presser was the only one who could possibly have a motive for removing that list of names. He was the one who bought the champagne buckets in the first place and decided who [fol. 347] they should be sent to. If there was any question that would come up concerning the propriety of that transaction, he and he alone was the one who would have to answer.

Now, we have shown, of course, during the trial that Mr. Presser had four different substantial reasons for wanting to destroy the document; first, it would have to do with concealing his relationship with people of bad reputation; to conceal his relationship with former Senator Bender; to conceal from the Committee and others that Union funds were spent by him to buy gifts for Union officials and public officials; and, finally, to conceal from the general membership of the Union the way in which he was spending their hard-earned money.

Now, why conceal his relationship with Senator Bender? We went into that enough in my previous discussion here, except to point out in passing that the Committee of Congress was investigating the Teamsters, and they were recommending legislation. Now, naturally, an issue that is going to come up in anyone's mind in Congress has to do with the necessity for legislation. Now, if the McClellan Committee succeed in bringing to light the fact that improper practices occurred in the Teamsters organization and nothing was done to clean them up, I believe that more Congressmen, naturally, would tend to feel that legislation would be necessary. However, on the other hand, if it was granted that maybe improper practices do exist, but the Teamsters decided and said they would clean it up themselves, this, of course, would minimize the need for any corrective legislation.

The testimony was that Mr. Hoffa had promised to clean up the Teamsters, that it took him time to do it, but he finally hired Bender. Now, Senator Bender was known to the Committee, and they had reason to believe that there was some close tie between him and the Teamsters, so that they investigated this and the purpose, again, of course, was to see if there was going to be a legitimate clean up. This, naturally, was a proper legislative purpose. The motive on Mr. Presser's part of concealing his relationship would be due to the fact that he didn't [fol. 348] want anyone to know that the man who was supposed to look into their affairs and pass judgment on them was, in fact, an old friend. Also, he undoubtedly would want to conceal the fact that at the very time that Senator Bender was a Senator, in 1955, he had used Union funds to present Bender with a champagne bucket.

We mentioned before the issue of concealing his relationship with people of bad reputation because he was afraid he might lose his job through that fact, if he knew people who had a bad reputation. That was our purpose in going into the meeting of the Joint Council 41 on August 14th.

The third motive, of course, is obvious, to conceal from the Committee the way Union funds were spent, and the fourth, to conceal it from the members. Now, you recall the by-laws of the organization do not authorize Mr. Presser to go out and buy Christmas gifts for others, and the minutes do not show it. He stated he didn't know whether general membership knows about it or not. Now, use your reasonably good judgment as to whether or not they do. We want to recall to you that in the year that those gifts were bought the minutes for the entire year do not contain one mention of the fact that gifts were purchased by Mr. Presser for these various individuals.

Now, there are other circumstances which you may consider in weighing the testimony against Mr. Presser. There was the sham he used in saying that he wanted to have the records photostated when he took them from Mr. Sheridan, and when he states that he ordered Mr. Schenk to do that. Well, this doesn't ring true at all. Mrs. Passalaqua was the office secretary. She was there in the office, according to all of the testimony, at the time that the issue came up about photostating. If Mr. Presser was serious about it, she would be the normal one he would hand them to. Now, as I said, the testimony is they were the only people in the office, Mrs. Passalaqua, Sheridan and Presser. He testified that he left the office a few minutes after Sheridan. Where did Schenk appear from, that he was told to photostat the records? The fact of [fol. 349] the matter is he didn't appear from any place, he was never told to photostat them. That's not the type of thing you normally ask a business agent to do anyway, but if you did, if Mr. Presser had asked Schenk to photostat those records, you can be sure they would have been photostated.

Another fact which tends to shed light on this matter was the testimony, as you will recall, about Presser telling Mrs. Passalaqua on the telephone that the documents were on top of the TV set in his office. You will recall that. The fact of the matter is, however, if he had told Schenk to have them photostated he wouldn't know—Presser wouldn't know where they were, he would have asked her to check with Schenk to see where the records were.

Finally, of course, the most persuasive and damaging testimony of all I pointed out before, and that's the testimony of Schaeffer. Mr. Presser had said he hadn't seen this document since 1955, leaving the implication that the document merely represented a transaction, the products were bought and paid for, and he was no longer concerned about it. Why in the world would he ever be calling Mr. Schaeffer that very period of time when the document was destroyed and asking Schaeffer to get the copy from the files of the Rudolph Deutsch Company?

The only reason he could possibly have, and he obviously had here, he either had destroyed the document at that time or was about to destroy it. He wanted to make sure his tracks were being completely cleared, and that the Committee would not find out in any other way about this list of names. His intention, naturally, was fraudulent when he was doing that here, but he wasn't able to get it from Rudolph Deutsch. Schaeffer told him they were unavailable.

At the beginning of the case we told you that the evidence, we believed, would lead to the inescapable conclusion that the defendant Presser violated the statute as charged in the indictment, that he was the one responsible for obstructing the business of Congress. We have succeeded in giving you all the information we have. There [fol. 350] is no evidence that the Government has, no information that we have, that you do not have before you now, and we firmly believe that on the basis of that we have succeeded in showing beyond any reasonable doubt that this document was destroyed, the other one was concealed, by the defendant William Presser, and eventually we will ask you to consider these matters and to bring back a verdict of guilty.

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TITLE 18 U. S. C. § 1505.

"§1505. Influencing or injuring witness before agencies and committees.

Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any witness in any proceeding pending before any department or agency of the United States, or in connection with any inquiry or investigation being had by either House, or any committee of either House, or any joint committee of the Congress; or

Whoever injures any party or witness in his person or property on account of his attending or having attended such proceeding, inquiry, or investigation, or on account of his testifying or having testified to any matter pending therein, or;

Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede the due and proper administration of the law under which such proceeding is being had before such department or agency of the United States, or the due and proper exercise of the power of inquiry under which such inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress—

Shall be fined not more than $5,000 or imprisoned not more than five years, or both. June 25, 1948, c. 645, 62 Stat. 770."

[fol. 351]

[File endorsement omitted]

No. 14326

IN UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee,
vs.
WILLIAM PRESSER, Defendant-Appellant.

CRIMINAL NO. 23,276

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO,
EASTERN DIVISION

Appellee's Appendix—Filed January 11, 1961

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[fol. 352]

PRETRIAL CONFERENCE

Transcript of Proceedings Had in the Chambers of Hon. Paul Jones, Judge of Said Court, on Wednesday, May 18, 1960, at 10:30 A.M.

• • • • • • •

Mr. Kiernan: Now, the next question comes to the identity of the five individuals to whom these buckets were addressed or shipped. There will be Dave Beck, Burt Brennan, Jimmy Hoffa, Paul Dorfman and John English.

In the case of Brennan and Hoffa, the records—or the buckets were shipped to what we believe to be the Teamsters Building in Chicago, Illinois—in Detroit, I'm sorry.

In the case of English, the bucket was shipped to the place we all know as the Teamsters Building in Washington, 24 Louisiana Avenue.

Of course, everybody knows who Dave Beck is.

Paul Dorfman, unless I am mistaken, is an insurance executive from Chicago, is that correct?

Mr. Hudspeth: I think so.

Mr. Kiernan: Who does a substantial amount of business with the Teamster organizations.

The Court: What is it you seek?

Mr. Kiernan: Well, what I'm throwing out, merely for consideration, is whether or not—I wouldn't expect you people to be able to answer right now because I didn't think of it myself until last night—but whether or not we could enter into some sort of a stipulation that these are the people who we know they were.

Mr. Knachel: Well, I can't enter into any stipulation of that sort.

Mr. Kiernan: Pardon?

Mr. Knachel: I can't enter into any stipulation of that sort.

Mr. Kiernan: You cannot?

Mr. Knachel: No.

[fol. 353] Mr. Kiernan: Well, again, I wasn't asking you to do it now; but would you say "No" right now without giving it any further thought?

Mr. Knachel: I would say "No" right now and give it further thought.

Mr. Kiernan: Fine.

Now, there are three individuals, of course, whose names appeared on the various documents showing that buckets were prepared for them. In the case of Judge Connell, we know that he did not receive the bucket.

In the case of Bender, he doesn't know whether he received one or not because—this is according to his statements to investigative agencies—when the excitement came up about the buckets, I believe he said that his wife went through the house and threw out everything that looked like an ice bucket or a champagne bucket.

In the case of Bliss: Bliss does admit that he had a bucket answering this description, which, to the best of his knowledge—am I correct in this now? I don't want to mislead you—to the best of his information, came to his home around the holiday season in 1955.

Now, is there any way that we could enter into any sort of an agreement as to who these people are?

The Court: What does this have to do with the issue on the question of the defacement of the record?

Mr. Kiernan: It would have only a minor point, your Honor, and that is why it would be better, if we could, to a large extent, I believe, keep away from it. It would, to some extent, have a bearing, certainly, on motive.

Now, if the people who were the intended recipients of these buckets were the elevator operators and the charwoman, or employees of the Teamsters in Cleveland, or people of that type, you would normally figure, "Well, there wouldn't be any reason to attempt any destruction." But if there was a purpose or a motive to conceal a relationship, if the relationship were such that it would give meaning to the motive, then, of course, the identity of the individuals becomes quite important.

[fol. 354] Mr. Knachel: Well, I would just like to ask one question.

I have been around a long time, and I don't know whether this trial is going to degenerate into a political football or—

Mr. Kiernan: Not at all. We want to avoid that.

Mr. Knachel: Some extraneous matters.

So what if Presser sent a champagne bucket to Mr. Rogers, the Attorney General: as I have said, what control would Mr. Rogers have over that?

Mr. Kiernan: As I said many times myself, sir, there is nothing stopping Presser from putting my name on a bucket, and I couldn't do a thing about it. It's unfortunate that people whose names were put on buckets, without their knowledge or consent or anything else, have had their names spread in the paper and been the subject of adverse publicity. I am very well aware of that; and to the extent possible—and consistent with doing what I consider the necessary job that I have to do and I'm supposed to do for the Government—to the extent possible, I want to keep all of these people's names out of the trial.

Mr. Knachel: Well, now, how is—how does that fit in consistent with your position?

Mr. Kiernan: Now, don't you agree sir, that it's pertinent with respect to motive?

Mr. Knachel: I don't agree to that.

Mr. Kiernan: Well, of course, now, you're trying my case.

Mr. Knachel: No, no. I am saying that this indictment is based upon an attempt to obstruct a Senate Committee investigation by mutilating an invoice.

Mr. Kiernan: That's right, sir.

Mr. Knachel: If it had the names of Jones, Smith or Johnson on it, it might be a motive to save people from embarrassment; but what difference do the names mean?

Mr. Kiernan: Well, it would make a difference. In the first place, there would be a difference with respect to motive; and, in the second place, if it was an invoice showing a couple of pairs of stockings to a few girls who worked in the building, for example, there would be a serious question, of course, whether there would be any legislative interest. [fol. 355]

Mr. Knachel: Well, I fail to see that when these men have no control over—

Mr. Kiernan: Well, I—again, I realize it's a very delicate thing, and that's why I brought the subject up now, so we could chew it out the best way we can. I don't want to bring in the names of these recipients except to the minimum extent necessary.

Now, it may be that if we could limit it to maybe three or four or five that I feel are very pertinent, I am willing to do that. That's what we would want to do. But, then, I would not want to put myself in the position where the Defense would raise some question as to why I did not mention the names of all of the recipients.

Now, if we could enter into a gentlemen's agreement on that, we could settle that point right now, without beating around the bush.

My primary concern is Judge Connell of this court.

Mr. Knachel: Why can't we—

Mr. Kiernan: I know he didn't get a bucket. There is no reason why his name should be mentioned at all. Now, to the extent that it's consistent with the appearances of justice and with justice, I would like to keep his name out of the trial completely.

Mr. Knachel: But, you see, here's the point: on your exhibit from the Ami Company, it shows that a bucket was—this is the vice of the thing—a bucket was engraved "Honorable James C. Connell".

Mr. Kiernan: That's right.

Mr. Knachel: He's being victimized by that kind of evidence, when, upon your statement, he never received—

Mr. Kiernan: I agree he is.

Now, what do you want me to do: throw the Government's case down the drain because Bill Presser didn't have common sense enough to keep a Judge's name off the bucket or try to give the Judge a gift?

Mr. Knachel: Well, now, we're not arguing to the jury.

Mr. Kiernan: We are not arguing for the jury.

[fol. 356] Mr. Knachel: I don't see how these names—

Mr. Kiernan: I have to represent the interests of the Government, or the interests of the public. Now, certainly, this is a pertinent point: as to whether those buckets were ordered; whether those names were put on them, and whether the records of these various companies show that the names were on them, and I am not going to be pressured into throwing the Government's case away. But, at the same time, I—that's why I said I didn't expect you to stipulate—

Mr. Knachel: May I interrupt you to say—

Mr. Kiernan: I have been giving it serious thought, and I expect you to do the same, without a matter of recrimination or yelling back and forth. Now, if you can give me any suggestion—

Mr. Knachel: I want to say, Mr. Kiernan, that you have not been pressured by me in any way.

Mr. Kiernan: No, sir.

Mr. Knachel: When you told me not—that I should stipulate all of the invoices of the Ami Company, because the Judge's name happens to appear on the—

Mr. Kiernan: I didn't say that. I didn't say that. I—the same advice applies to all of them.

The Court: Well,—

Mr. Knachel: I don't think any names are pertinent.

The Court: All you're trying to get here is that—who those people are?

Mr. Kiernan: That's right, your Honor, and what interest Congress might have in some of them, at least.

The Court: Well, if they don't want to agree to that, you can easily prove who—

Mr. Kiernan: Well, no, but that would be one of the reasons why then the names are important.

Mr. Knachel: Well, I can't stipulate to anything on that—on the subject of—

The Court: They all know that Judge Connell was a District Judge here, and they all know—everybody knows that Bliss was a Chairman—was he—of the Republican State Committee—I don't know what his title was—

[fol. 357] Mr. Knachel: State Chairman of the Republican Party.

The Court: Committee?

Mr. Knachel: I assume he is.

The Court: Well, that's what I supposed; and the other fellow is Bender.

Was he in office then?

Mr. Kiernan: Bender had—at the time of the gift, I believe he was still a Senator. At the time of the alleged destruction, he had just been made a clean-up man for the Teamsters, I believe.

The Court: Well, that's the extent of it.

Mr. Knachel: Well, my position is that none of these names are admissible in the trial of this case.

Mr. Kiernan: Well, I certainly will not concede that point; but I will concede it to the extent of Judge Connell, for the simple reason that I don't believe the Committee was acquainted with the Judge at the time the records were destroyed or, at least, to the best of my knowledge, it was not a name which should suggest itself as being of interest to the Committee; and we are trying honestly, to the best of our ability, to keep people—as a matter of fact, the entire group of recipients or alleged recipients are the victims of circumstance. They had no control—apparently did not ask for the buckets—they had no control over their names being put on it; but the Government can't undo what was done by somebody else.

Mr. Knachel: Well, if this were an indictment where they claim Mr. Presser misappropriated funds, I mean, where he ordered these things, and he and the salesman split the money, thereby he misappropriated Union funds, that would be one thing; but that's not what we're trying here.

Mr. Kiernan: No, sir.

Mr. Knachel: Those names are purely incidental in an unrelated way, as far as I'm concerned, to this indictment.

The Court: Well, if I understand what the Government's position is, they're trying to show that this defacement—or whatever it is—of this invoice was done by the Defendant—that's the charge, at least—and they seek to [fol. 358] show a motive for his destruction of them because the revelation of whom he was sending these to would be pertinent to the inquiry of the Congressional Committee because he would be undertaking to send it to people who might be influential politically, or in some other way, for his purposes. That's, I believe—

Mr. Kiernan: That's it in a nutshell, your honor.

The Court: It's an unfortunate situation, but I suppose they have got—they're in it, and they have got to establish the case if they can make it by proper proof, relevant proof. But you don't have to agree to that. I'm not pressing you to agree to anything.

So if he doesn't want to make any statement, why, you will just have to prepare whatever you can on that score.

Mr. Kiernan: Well, now, this, of course, I am asking for advice on. The press, the public, is aware of the fact that Judge Connell's name was supposed to have been on that list. It would be impossible to ignore it completely. But if it's merely mentioned to the minimum necessary extent, in other words, the list is identified as being—these are the names that were on the list—and from there on, it would be my hope to drop his name completely from the trial and not bring into issue anything concerning Judge Connell at all, or repeat the name.

Now, there is, of course, the principle that if the Government does not bring out something or another in evidence, that it may be because it would be hurtful to the Government's case.

Now, I haven't researched the point to see whether or not it would necessarily fit here, but will you people agree that if I do not—or if we refrain from dwelling on Judge Connell, that you will not make the fact we refrained the subject of any request for a charge that testimony concerning Judge Connell would have been unfavorable to the Government, or that we had any ulterior motive in leaving his name out, at least, to the greatest extent possible.

Mr. Knachel: Well, my position is that none of these names—

Mr. Kiernan: You're not answering my question. I am aware of what your position is. I am telling you that I'm not going to be guided by it.

[fol. 359] Now, I am asking you a question with respect to one name.

Mr. Knachel: Well, my answer is no, because I am a trial lawyer, and you are, too. We don't know how these positions will come up in a court room.

Mr. Kiernan: Well, then, we will have to—it still will be our intention to avoid—

Mr. Knachel: Play it by ear.

Mr. Kiernan: Avoid bringing the issue up, unless something beyond our control forces us to.

The Court: All right.

OPENING STATEMENT FOR DEFENDANT

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The Court: Statement on behalf of the Defendant.

Mr. Knachel:

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Now we come to this problem about committees.

I suppose that you people here know generally of the Kefauver Committee, the McCarthy Committee, and now the McClellan Committee. Those were all, I believe, Committees of the Senate.

Mr. Presser, he went into office on January 1, 1953, and in November of 1954, he was called before a House Committee to give testimony about his various activities in this community. And in the course of the House Committee hearings the same subpoena happy situation existed that they subpoenaed the records of the Council and all the records of everything, and some of those records have not been returned to this day so that they could use them in their business.

The McClellan Committee then comes along. The first thing they do is ask—to show you the type of subpoena they issue, they issue a subpoena for records starting in 1949, and he didn't even come into office until 1953. But at any rate, the problem got so bad that this department which claimed that its left hand didn't know what its right hand was doing, was keeping the records of the Council and other records so long that the Auditor, Mr. Cozza, [fol. 360] could not sit down with the Internal Revenue Department and go over the things that they wanted because the McClellan Committee had their records.

Now coming up to September of 1958. Well, these Christmas presents were given out in 1955. They were purchased from Rudolph Deutsch and they were paid for. So the Government didn't have any problem about investigating any fact that Mr. Presser was snitching any money away from anybody when they gave them those presents because the Government itself at the time they went in to examine more records had the cancelled checks showing that Council 41 had paid $824 for these champagne buckets that were given to the people at Christmas of 1955.

Now at the time Mr. Sheridan came over there, there was a well-established course of conduct between not only the Teamsters Union but other unions in this town and the McClellan Committee. They had investigators in this city and when the investigators wanted something they served a subpoena on someone. They arranged that their auditor should get those records for them, take them where the man from the McClellan Committee wanted, and if he wanted to take them he gave them a receipt. And our files are full of receipts from, at least, one or two members of the McClellan Committee where they came and took records and had them for their own use and gave Mr. Cozza, the auditor, a receipt for the files they took.

Now on this day in September Mr. Sheridan had been in Mr. Cozza's office, the auditor, on the 5th of September, 1958, and he knew he was the auditor. He had been dealing with him and he subpoenaed Mr. Cozza to bring with him all the records of his accounting firm before the McClellan Committee in Washington. Pursuant to that subpoena Mr. Cozza went to Washington and after he got there with his records, he talked with the Committee and they didn't want him to testify any further.

But on the date that Mr. Cozza was in Washington, Mr. Sheridan instead of dealing with him, comes over to Mr. Presser's office and he comes in there and says he wants to look at the records. Well, Mr. Presser was there and [fol. 361] his secretary, Ada Passalaqua was there, and she came in and told Mr. Presser that Mr. Sheridan was there and wanted to look at the records.

Well, he says call the auditor and see if he is here. If he is here, why, they can handle them, go over them together.

So she called the auditor but the auditor was in Washington pursuant to a subpoena that Sheridan had served himself.

Well then, Mr. Presser said, "Well, why don't you be comfortable here," and he pulled up a table for him and he said there are the files in the cabinet. And the man worked there.

When it came around lunch time he asked him if he would like to go to lunch with him and he said no, he didn't think that would be a proper thing to do, he might be criticized for it.

While they were there Mrs. Passalaqua saw Mr. Sheridan writing down some things and then she saw him putting things into his pocket. Now then, around 4:00 Mr. Sheridan said he was going to leave and he bundled up what all of the files in the cabinet that he wanted, the ones that he wanted and he said, "I am going to take these with me." And Mr. Presser said, "Well, it is all right, just give me a receipt for them because we had these receipts before."

And he said, "Well, it is too late, takes too much time to write out a receipt." He said, "Maybe you could get them photostated."

Mr. Presser said, "All right, but I will be out of town for about three days and I will see that they get photostated."

Well, he left word for one of his men to photostat them, and when he got back he found out that they weren't photostated. So he had his girl call up—I believe call up Mr. Sheridan and tell him that they hadn't been photostated, so come on over and get them, assuming that he would give a receipt for them.

Mr. Sheridan said that he would rather not come after them unless Mr. Presser was there. So he came over and came in, and when he left the records, they were placed on a television set in Mr. Presser's office. When he came back Mr. Presser handed them to him and he got out in the outer office and he looked over them and he started shouting [fol. 362] around, and Mr. Presser said, "Cool off. What are you talking about?" And with that he went out of the office and went on his way.

Then Mr. Presser was called before the McClellan Committee in Washington. Now there are some pros and cons about these Committees. But in the case of Mr. Presser and in the case of these other witnesses, when they go down there the Chairman of this Committee is a lawyer, is a former County Prosecutor, and one of the other members is a lawyer and they have a chief counsel, and these men all interrogate a witness and they do not give the accused, as I call it, or whatever it is, a right to cross-examine. I mean, he had no right to cross-examine Mr. Sheridan there in Washington. Not only that, but they have open hearings, and that is the kind of procedure they have down there.

In the first place, Mr. Presser went down there; he thought that the examination would cover his own personal records involving his own personal life, and he didn't take any records down there of Joint Council 41 because they were in the hands of his auditor and he did not expect to be questioned on the matter of Joint Council 41. However they did, and he had no records of Joint Council 41 available to him because they were with his auditor at that time.

Now that is the position of the Defendant, that under this subpoena he did not alter, cut or destroy any invoice of Rudolph Deutsch because the last time he has any recollection of ever seeing or having anything to do with it is in Christmas of 1955 when he got the bill from the Rudolph Deutsch Company and approved it for payment so that the check was issued, I believe, on December 29, 1955.

Now I ask you people to be of an open mind about this matter until you have heard all the witnesses in this case, because you must have heard all the evidence before you come to any conclusion as to the merit or lack of merit in any phase of this case.

In addition to the invoice, I must say, that Mr. Presser never took an envelope out of that file that was there, or never took away any Christmas list that was contained on the inside of it.

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[fol. 363] CLOSING ARGUMENT FOR DEFENDANT

The Court: Mr. Knachel for the defendant.

Mr. Knachel: If the Court please, Mr. Kiernan, Mr. Hodspeth, members of the jury:

This trial on the evidence in this case has been very short. I believe the Government, after the impaneling of the jury, the statements by the lawyers, if my memory serves me correctly, the Government took two days to put in its case and the defendant put in one day. So that we have had, outside of the impaneling of the jury and the statements of the lawyers, approximately three-days trial in this case.

It has not been possible in such a short period of time to get well acquainted with jurors. In a city of our size jurors know very little of the lawyer and the lawyer knows very little of the jury, while in the smaller towns some of the jurors know both the lawyers and the Judge, and they have a more intimate relationship, so far as that goes.

Now, since something has been mentioned about my background in the impaneling of the jury, I want to say to you that in 1922, about 38 years ago, I was a teamster. I drove a mule in a stone quarry. There were no unions at that time. My grandfather was a teamster. He had a team of horses and drove a coal truck. When I was working in the summer going to college I got 20 cents an hour for 10 hours a day, 6 days a week, and from this background I know that in the last 30 or 40 years labor has been striving to meet management on the basis of equality. In other words, in the days when I was a boy a strike didn't last very long because a laboring man couldn't afford it. Their meetings with management officials were probably in the hotel and paid for by management.

I don't know whether all of you are abreast of these things or not, but we are living in a society today where labor is attempting to negotiate on equal basis, and we say they are entitled to. They have fought all these years to do it, and we know that the progress they have gone through has been a slow process, and in order to give them the opportunity to do that in collective bargaining there [fol. 364] must be an organization of laboring men in industry, which they didn't have when my grandfather worked.

They had no dues to protect them in a strike, and so laboring men now pay dues.

I bring this to your attention because it is awfully easy for anyone to say, "Well, my dues went for such a thing as a champagne bucket, or something like that, and that is not just right." Well, if the members of the jury are going to adopt that philosophy right off the bat, then Mr.

Presser is subjected to an injustice, because perhaps that may affect your judgment when you decide this case on its merits.

But the real practical situation about things like that is, and certainly you people all here must know, that all during those years when there were no unions and no union dues the corporations of this country were giving out Christmas gifts to Senators, Congressmen, and other leaders, because they were interested in the type of legislation that corporations wanted passed.

Now, if that hasn't been a crime in forty years, why today are people making, through committees in Washington, a big thing out of the fact that if a director of a corporation sends some Senator a champagne bucket, then why can't an official of a labor union do it? Because labor has become a political power and Senators want labor's votes, and sometimes a Senator who—it works both ways—a Senator who has been passing bills that were favorable to corporations maybe tomorrow will be passing a bill that will favor labor.

What does Mr. Presser have to do with things like that, when they are talking about motive? Well, there isn't any doubt about who he is for, and there isn't a doubt about what he has done, because all through his life he has fought for labor, and the evidence in this case shows that when he came there in 1953 the Joint Council was broke, and from that time on they started accumulating money, they started accumulating dues, and they accumulated more dues because they got more members, and now you have a situation squarely before you where you have a healthy union, where it has a health and welfare fund, where it has funds to take care of wives of teamsters when they [fol. 365] are pregnant, they have a pension fund; and the members that live here, the rank and file, people in the Teamsters Union, of whom there are 1,600,000, and in Ohio 85,000, are behind their leaders.

I say that, mark you, because every one of these men, the man that drives the milk truck, comes to your home, the man that drives the bread truck, the man that drives the dry cleaning truck, all of these people know today, day in and day out, what they didn't know in my youth, that they have got some security. And they know they have got that security because the man on the milk truck wasn't able to fight for it, he couldn't take his time off from the milk truck or the bread truck to go down to Columbus to the Ohio Legislature, or to go to Washington, and if you will recall the history of labor legislation in this country, we have the Taft-Hartley Law, and prior to that we had the Wagner Act, and the corporations had an interest in it and labor had an interest in it. Out of all of this came these leaders, and Mr. Presser has lived here all of his life.

Now, if he were some imported fellow that came in from Chicago or New York or some place and took over this Union, I wouldn't have this argument with you, you would have a perfect right to believe that he is not the kind of a man you want as an officer of the Union. But that, gentlemen and ladies of this jury, is not this case.

This man went to grade school here, he went to high school here. He played football on the football team. When he was 18 he got married. He married a girl who was 17. They have been married 35 years. They have four children. He is a part of Cleveland, and he is a part that is a vulnerable part because every time he goes out he is fighting somebody, he is fighting truck executives on the other side of the table. Maybe they don't like him. Maybe they do like him. Maybe they admire him, maybe they say, "He is tough, but he is fair."

We saw that when these four or five men, heads of these trucking companies, came in here. This man has lived all his life in Cleveland, and these men from these trucking companies have lived in Cleveland, most of them, all their lives.

[fol. 366] Matthew O'Brien I know personally. I know a lot about him. He had a boy at Notre Dame who went on a hunting trip with a friend of his. A shotgun exploded and killed the boy. So he knows a lot about life; he knows a lot of things about people, and maybe we have reached a place where we should know more and more things about people.

These men could have had some excuse. They could have said, "Oh, I'm busy, I won't be able to come." Or, "If Bill Presser goes to jail, well, I don't like him anyway, so let him go to jail. I'll find a business trip out of town. I don't have to testify." But these men came in here because they have been bargaining with him, and they knew he was fair, and he was not the kind of fellow that was going to strangle them to death, and leave them in a position of a company that had no business and labor that had no job.

So what do we say now? Well, Abraham Lincoln in his Gettysburg Address in 1863 concluded with this statement:

"That the government of the people, by the people, and for the people, shall not perish from this earth."

Well now, when they go down to Washington nowadays, a Senator or Congressman gets on a committee, and the committee goes over to the Appropriations Committee, and the Appropriations Committee appropriates our money in the treasury. The McClellan Committee—this shouldn't be the United States against Bill Presser, it should be the McClellan Committee against Bill Presser, on this indictment—they appropriate $2,000,000 of the money that we should be saving out of our hard earnings for our retirement. We paid it in taxes already, and it's there. They spend $2,000,000 to draw up a bill, and how do they do it? Instead of calling six or eight or ten people from management and six or eight or ten from labor into a room in a hotel and then asking management, "What have you got against labor?" and labor "What have you got against management?" they don't do it that way, but they spend two million dollars, and Senator McClellan talks about two million dollars just like it was pocket money.

[fol. 367] What kind of a hearing do they have? Well, they can call anybody, they can call anybody and say anything. They put on a witness against you like Sheridan, and he says what he has to say. There are no rules of evidence, and you have got to listen but you can't cross examine him, you can't ask him any questions. So the Committee proceeds with newspapers, with television and everything, and the radio, and the Chairman gets a big reputation all over the country for being a leader in the country, or something.

So what do they do? They have these kind of hearings, and they call these people up, and they assassinate their characters, and they name them in the newspapers often enough that everybody thinks they are wrong, and they never in one of those hearings say anything good about them.

So I have said all I have got to say about that, and I am going on now to this man Sheridan. Now, when you are a trial lawyer for thirty years, somehow or other you develop an instinct. If you had been in this business as I have, you would too. When I first saw Sheridan on the stand I knew there was something wrong with him, and I know it now and I always will know it, because they say that Sheridan is a top man, top trained man in government. Well, what is he? He is ex-FBI; he is ex-Security Agency; he is ex-McClellan Committee, and now he is going on some other committee which is the same old thing under another name. And why do they put these incidents in the case? So that you and I will lose track of them.

Now, I say this, and I assume that each one of you will follow me, because the Court will tell you that you decide this case on reasonable probabilities, and reasonable probabilities are what your common sense tells you is true.

If Sheridan had walked into Mr. Presser's office and those things were in that file, and he went away, and when he came back he saw they had been altered, Sheridan wouldn't have been an angry man. He would have been a happy man, because as a top government investigator he had in his files something that all he had to do was get on a plane and fly to Washington and go to the FBI Lab, and he had his case made. I can see the trial right now, the Govern- [fol. 368] ment coming in and they show from records that Sheridan had, and that he ought to have had and didn't, that he was here on certain days, that he went in there and those things were in there, and that when he came back they were torn, mutilated, and he left. How simple could this case be? All they would have to do is to have Sheridan take the stand and say that's what happened, and then all they had to do was put Fred Miller from the FBI Lab at Washington on and he would say "I received this invoice about six hours after it was obtained from Mr. Presser's office, according to the information given me by Mr. Sheridan. I find on this invoice a fresh finger print or two, which is the finger print of William Presser. I also find on this invoice that the tearing along here [indicating], that the tearing along here is fresh."

Mr. Kiernan says he is a top government investigator. Well, if Bill Presser is guilty, why wouldn't they put the case then before this jury? Then they could say to you, got a fresh tear over here," and both of them, ladies and "We have got a fresh finger print of Bill Presser, we have gentlemen, could come out of that FBI Lab so fast that they ought to have their case nailed up in two days, because anyone knows, and the man from the FBI Lab besaid, that those finger prints would be fresh for a couple of days. That was his testimony.

You people all know that when something is freshly torn [tearing piece of paper]—take this piece of paper, or any kind of invoice or anything—maybe it's not torn as sharply as this—but there are fringes on it, there are edges on it, and those edges from age get discolored, and they curl, so that a man from the laboratory can tell you whether they are fresh edges or whether they are old.

So I just say to you, and it makes sense to me, and it should make sense, that if Mr. Presser is guilty of what they say he is guilty of, this thing would be simple, if they had a fresh print or two in here, and they had paper torn which would be fresh and anybody in Washington, D.C. would show both of these.

What is the evidence in this case? Sheridan is very vague about his whereabouts. Well, let's see. In the first place, the Government says, "We have blanket subpoenas." I mean they had nothing on them but McClellan's signature. [fol. 369] They can do anything they want, put anything they want on them. They put on this one 1949, they want records. Well, that's a long time before Mr. Presser ever came to office. Sheridan didn't even remember what was on the subpoena, the subpoena that's in this indictment, the subpoena that calls for six years' records, and if he is the top man you are supposed to think he is he would have at least remembered the things he had typed in himself. He made a year's mistake, and the Court was impatient with me when I was questioning him about the fact that those records in Washington showed that he was present at the hearings on the 9th, 10th and 11th. Well, if he wasn't there he had plenty of time to review his activities and be sure of where he was. He had records that he sent to the Committee to show where he was.

Well, his attitude on the stand is the thing I am talking about. He had to leaf through this record, and leaf through that record, and leaf through all the records, before he could answer whether or not he was in Washington or whether he was here. Now, you see, that makes a little difference, or no difference at all, but it shows that the man was not sure of himself, and he wasn't all the way through.

Now, these other things, these statements made by the Government, are generalities unless they are explained. All right. You people know what the facts are in this case. When Sheridan came here he said he was instructed by the Chief Counsel to find out what Bender's relationship was to the Teamsters. Well, let's see how important that is now. He came here and he checked, and he left. Well, Senator McClellan said in the last statement I asked him—I asked Senator McClellan if he was a friend of ex-Senator Bender, and he said, "I have no reason to be unfriendly to ex-Senator Bender." After all this business we are going through now, "I have no reason to be unfriendly to ex-Senator Bender."

Now, something has developed here, and I think that when you get to your jury room you are going to analyze this. When Sheridan came here he had a field office, and there are facts in the record that show how they transacted [fol. 370] business, that the field office wanted records, Mr. Cozza brought them over to them, they gave him a receipt for it, and they talked about the records, and when they were through with them they got a receipt back from Mr. Cozza. What does Mr. Sheridan do with Mr. Cozza? He has got to have some way of getting over and talking to Presser to make this invoice story stick. On the 5th of September he serves a subpoena on Mr. Cozza to be in Washington, D.C. on the 9th. So he gets Mr. Cozza out of town, and then he goes over to see Mr. Presser.

Well now, when they meet over there, they certainly know what the arrangement is over there, that when they want records they give a receipt for them and take them. Well, if Mr. Sheridan knew that at that time his problem was simple. All he had to do was make a receipt for the files he wanted, leave the receipt there and take the records with him. He had them with him. They were in his possession. He never had to leave them at all, and on his shorthand envelope, or whatever you call it, he had taken notes all the way down, showing these names, and at the bottom he had two names that he says were on another list, two men high in life, in political life. So his job was done.

But here is an aspect of this case that I would like to call to your attention: He says that he went to Rudolph Deutsch after he talked to Mr. Presser the second time. But did he? Did he go on the 13th or did he go on the 6th? Now, let me explain for a moment my feeling about this thing. In the first place, the cancelled check to the Rudolph Deutsch Company was in the field office, and this cancelled check was found way back in 1955. Now, where would you expect to find this invoice? Well, if it first went to the Internal Revenue they would say, "What was the cancelled check for?" and they would have the invoice in the file, they would have seen the check and the invoice supporting it, the cancelled check and the invoice to show what they did buy with the check. And the invoice would show, this invoice of 1955, would show what the cancelled check was for, or what the money was spent for, because that would be the invoice to cover it.

[fol. 371] Now, when these files come—and they have been all around, you know that, all of these records have been around every place, so when the files come over to the field office they had the cancelled check, and they would have the invoice too to cover the transaction covered by that check, because they had been subpoenaed and were over there.

Now, if Mr. Sheridan, good investigator that they say he is—and he denies he saw that cancelled check—but if he is a good investigator, he would have seen that cancelled check and he would have seen the supporting data for it, and he would have known that that invoice came from Rudolph Deutsch.

So he was in town, and I think he went over on the 6th, and I think that's when he talked to Mr. Feder, because here is the testimony on that subject. It has been established here, I believe, that Mr. Deutsch died on the 4th of September, and this is Mr. Feder's testimony. This is Judge Jones saying:

"You can't be sure whether this visit of Mr. Sheridan was before or after that, can you?"

This refers to the death of Samuel Deutsch. Mr. Feder replied: "I believe it was just after Mr. Deutsch's death." Well, just after Mr. Deutsch's death would be Saturday, the 6th.

So that if he went over there on the 6th he had all this information before he ever came to Mr. Presser's office. So under either theory how could you expect—well, here is another thing from the testimony of Mr. Sheridan, he says he walked right in and he asked Mrs. Passalaqua why these new files. Well, she said, "These are files that we have made up since the McClellan Committee took all of our other records." So they would be files, then, of 1957 and files of 1958. Why would you find an old 1955 invoice in 1957 and 1958 files, when the 1950 files were in the field office?

Another thing, what does your common sense tell you about the defendant Presser? If Mr. Presser had any feeling about doing any wrong, and if he is the kind of man they picture him to be, when Sheridan came back there four days later wouldn't he have a lot of people around there, a [fol. 372] lot of witnesses around there so that they could come into court some day and tell their version of what Mr. Sheridan said, if he is that kind of a guy?

Well, what happened? Mr. Presser got a call on the phone and Sheridan told him he was at the Airport, and he said, "If I had known it was you I wouldn't have answered." That was probably humorous. Sheridan told him he had promised him these records, and he said, "If I promised you those records, my word is good. Come on in and get them."

Now, while he was coming from the Airport he could have had a lot of people around there, but he didn't. Because he knows he is innocent, and we all know he is innocent. Because if he wasn't Sheridan would have taken that invoice to Washington and they would have had fresh finger prints and they would have had fresh tears on that paper.

Now, there is another thing about this case, about the man from the FBI Lab in Washington. One thing I want to ask you first: if Bill Presser is going to tear names off, is he going to tear six off and leave two on, and erase two, if he is that kind of a man? Or if he is going to tear them off, wouldn't he tear all eight of them off? I mean if he is the kind of fellow they say he is, the Government says he is, and if Bill Presser is the kind of guy they say he is in destroying the envelope with the letter in it or the yellow sheet of paper, if he is going to take that paper out and destroy it, why wouldn't he take the invoice out and destroy it?

Sheridan is so unsure of himself that let me tell you what happened to him. Here is a question by Mr. Kiernan:

"Are these files in substantially the same condition they were when you obtained them from the offices of Joint Council 41?

"A. They are.

"Q. Now, apart from being in these files, was a search made of the records of the McClellan Committee files to determine whether or not the invoice, the other portion of the invoice, the list or the envelope was ever turned over?

"A. Yes, there was.

"Q. And what was the result of that search?

[fol. 373] "A. To the knowledge of anyone connected with the Committee who conducted the search or would have obtained these records, they have not been turned over."

Well, what would be the reason for any search if he had taken them out of the file and he had torn the paper off as Sheridan says, what would be the reason for them looking through their files for them again if they were sure of their position?

I want to touch a little bit on this question of authority to give Christmas presents. In the first place, you have in evidence the minutes of the 1953 meeting when Mr. Presser came into office, which authorized him to give Christmas presents, and that was on the occasion of his taking office, and that authority continued until it was revoked. Now, they say that he didn't have authority for the year 1955 in the minutes. That is their only claim, that he didn't have authority. If you will examine the President's duties in the bylaws of this Local, you will find out that the President shall have the authority to disburse or order the disbursement of all monies necessary to be expended on behalf of the Council, including such amounts which in his judgment will further the best interests of the Council, subject to the approval of the Executive Board. You will have this in evidence, and you can read it at your leisure.

Now, there has been much ado made about the fact that Mr. Presser was in town maybe the 9th, 10th and 11th. Well, what difference does it make, actually? The point of the story is this. Mr. Presser says he was in Washington on those days, and maybe some of you people, of course, just don't know how you deal with your secretary, but when I'm in Columbus or out of town, I call her up and she tells me what mail has been received, and she tells me what is in it and I tell her to send a letter to somebody, and she does. She signs my name to it, and she sends it out. That's the way you do if you are busy, and if you have a girl who had been in the organization for 19 years, who knows probably more about some of these things than you do yourself, I think it is the natural thing for her to do those things for you. So she does write letters and sends them out, and she [fol. 374] signs his name to them, and she signs his name to pay checks because they got paid on Thursdays.

But logically, the McClellan hearings were coming on, so he went to Washington to talk about them. Is there anything unnatural about that? And yet the only thing they say is that there was an incoming telephone call from Hoffa asking for him, and that it was answered, and that there was another one made to his home. Well, if he was on his way back from Washington, he was probably flying back. But if they could bring a man from Washington, from the Telephone Company in Washington to show you an incoming call, why don't they bring a man from Cleveland?

Here is a busy man, telephoning all over the state. If he was in Cleveland on the 10th and 11th he would have had calls to Dayton, Cincinnati, Columbus, or any other place, originating from Cleveland where Presser called somebody else. Now, you just don't put in half things like that if you are seriously contending for it. Because instead of bringing the man all the way from Washington they could have brought a man from Cleveland in here and he would have said, "Why, sure, on the 10th and 11th Mr. Presser made long distance calls to Dayton, to Cincinnati, to so and so." Then you would have testimony of calls originating in Cleveland.

Another note I have here—I'm not very well organized from this point in—but if they wanted to know about Senator Bender's activities, doesn't it seem strange to you that they never even got hold of Senator Bender's files? Not once. Senator McClellan says that he is not unfriendly to Senator Bender.

Now, another thing. I say that he was at the Rudolph Deutsch Company on the 6th because it was right after Mr. Deutsch's death, and if he was there and had seen that cancelled check, and if he got the record from Rudolph Deutsch on the 6th, then he knew who these people were, all those people on the list, and he knew that before he ever came to Mr. Presser's office.

And another thing, when we got to Presser's office and if, as he says, he made a note which is in evidence—made this note [indicating]—and on this note he has the number, [fol. 375] the Rudolph Deutsch Industrial Sales Company, sold to Teamsters, 8 champagne masters, $800, Sales Tax $24, and all the names down the line, well, he didn't have to come back to Presser's office the second time. Why did he? Why did he have to come back at all? The only reason he wanted to come back was that he wanted to see Presser under some excuse or other to make up some kind of a story, but when he left here he knew he didn't have any kind of a case against Presser because they never went over to the FBI until November 10th.

I said to you this should be the McClellan Committee against William Presser, and they talk about him being worried. Well, when the news comes out that all these officials, all the way down, are going to be kicked out of the Teamsters Union, I suppose a man would be worried.

Well, I want to ask you, who do they expect to replace them with, the men that have been on the picket lines, and the men that know the problems of these people? Who does the Government expect to replace them with? Some college boy right out of school? What would he know about the problems of the laboring man and how to fight their problems with the trucking companies and try to get a contract?

So if they are talking about obstructing justice, I say to you that Mr. Sheridan on that day never even had to come back to Mr. Presser's office. Why would he? He had all the information. He had the names. If he hadn't gone to the Rudolph Deutsch Company on the 6th, then I say to you he could have gone there on the 9th. Why couldn't he go on the 9th? If he is the top investigator they say he is, and he got this information on the 9th, why didn't he go there? He was at 22nd Street. All he had to do was to go up to Euclid Avenue and go up to 14th Street and he would have had all of the data that they had, because Mr. Feder said it was all available.

Now, on the dates—I think dates are important in a lawsuit. Here is the testimony of Mr. Sheridan from the record:

"Q. On what dates were you in Cleveland in September, 1958?

[fol. 376] "A. Well, I know I was here on the 5th. I know I got back on the 8th." He doesn't say where he was on the 6th.

"I believe I left on the 12th and came back on the 13th. I don't know—I did come back through here, but I am not quite sure when."

Well, the Government has had all these days to check with different people and find out where he was. Mind you, they say about Bill Presser that they don't believe he was out of town. Well, Sheridan says he was here the 9th, 10th and 11th, and if that is true, if he was here all that time, where is the record of the Statler Hotel, the Hotel Cleveland, or the Carter Hotel showing the time he checked in and time he checked out?

This is my cross-examination:

"Q. Well now, on what date did you first get to Mr. Presser's office in September?

"A. Well, it would be the same day as the date on the subpoena, which would be March 23rd." That's the first time he was there.

"Q. When did you next go to his office?

"A. The next time I went to his office was on the occasion of the review of the files in September, 1958, sir.

"Q. What date in September, 1958?

"A. September 9, 1958.

"Q. Are you sure of that?"

He didn't answer, "I'm sure." He says, "That's the date on my notes."

And is it on these notes that he made? Well, I ask you when you come to your jury room—you will have this exhibit with you—to look over all the handwriting down here, the typing and the pencil, all the way through, and tell me whether that date "9-9-58" was made at the same time this other memorandum was made. You will all have a chance to see it and look at it. It appears to me that this note was made at one time, and up in the corner this "9-9-58" was made at another time because it doesn't have the same strength of lead from the pencil that the rest of this memorandum has.

[fol. 377] Now, there is another point I am going to make here, and that is this. There isn't before you, members of the jury, anybody as a witness that wrote these names on here. You don't have any evidence in this case as to what bookkeeper at the Rudolph Deutsch Company wrote these names down on here. There is no evidence as to who wrote them. They didn't ask Mr. Schaeffer about it. But these names were written down on here, all of them.

Now, if you will recall I asked Fred Miller from the Lab of the FBI if they had checked this exhibit right here in front of you for impressions, and by "impressions" I meant that while someone was writing with a pencil an impression would show through on the back. He said he found no impressions on the back of these names that he was checking out. Now, if on the front page of this original invoice these names had been written, there would at least be an impression on the back here of the two top names where they said it was erased, but he found no impression in his laboratory test that a pencil writing the two top names had come through. Maybe the first one was made in blank. I don't know. But I know what he said, that there was no impression through on these names.

I believe I have talked to you about this case the way I feel about it. You are going to your jury room and, of course, we all know that your verdict must be unanimous. We all know when you get there you will elect a foreman or forelady to preside over your deliberations, and that when you do that you will sit down and discuss this evidence carefully. When you do it, I ask you to use your common sense that you have at home, and please decide this case on the evidence. There is no place in the American court room for anything else, because you people of this jury, and the juries all over the country, are the ultimate in problems involving our country, and if the jury system ever fails this country is in deep trouble.

I know sometimes juries disagree because someone is obstinate either way—for conviction or for acquittal—and so I say as a parting matter to you, that you all give attention to what your fellow juror says and analyze it with the facts.

Why would Bill Presser have any interest in an invoice [fol. 378] that was dated in 1955, and if, as the Government says, he had an interest in it and he was guilty as they charge, why didn't they take that invoice then to the Lab? Their own man says the finger prints would have been on the paper for a couple of days. They could have examined it for finger prints and could have examined the tear on there and they would have shown a fresh tear and there wouldn't be any problem.

But these reasonable doubts, and the method in which this thing was all handled, leads to but one conclusion: that if some poor little stenographer was sitting here charged with obstruction I doubt if this case would be here. But the same rules of law, ladies and gentlemen of the jury, apply to Mr. Presser that apply to that stenographer if she had torn a paper and she had known she was going to be a witness some place and was under subpoena.

I haven't much more to say. I know that Bill Presser is a citizen of this community, and I know he is a hard bargainer for labor. I know he is a bargainer—I know he is respected because of these men that come here and testify, because they could have ducked it. He is a member of our community, and I ask you to recall that this is a prosecution from Washington. Senator McClellan comes here from Washington, gets immunity, or gets the right to testify during his Congressional term. Sheridan comes from Washington and the Government's lawyers come from Washington.

I don't want to bother you by taking too long, because sometimes jurors think maybe we do. I don't know, maybe some of you have made up your mind about this case a long time ago, maybe some of you are thinking about it. But I hope that when you do arrive at a verdict, when you come back here that you will have been guided by your best judgment in deciding this case, and I know you will look me in the eye, and if I have a chance to talk to you sometime after this case is over, which will be my first opportunity, I know that you will be very frank and look me in the eye and tell me how you feel about it, and that's all as a lawyer I can ask.

Thank you.

[fol. 379]

Closing Rebuttal Argument for the Government

The Court: Mr. Kiernan.

Mr. Kiernan: May it please the Court, ladies and gentlemen of the jury: probably the only point on which the Prosecution and the Defense are in complete agreement is that you should decide this case solely on the facts and on the evidence that has been presented to you here in court. There is no question that Mr. Presser is not on trial for being a labor union leader. He is not on trial for being a native of Cleveland. He is on trial solely on one charge, and that charge is that by his own hand he obstructed or intended to obstruct justice.

Now, a lot of reference has been made to the fact that the McClellan Committee operated in such a manner that there was no right to cross examine. I have no idea in the world what that has to do with this case. This is not the McClellan Committee. Certainly Judge Jones is not Senator McClellan. This is a court of law. The defendant in this court room was represented by two attorneys, one of whom told you he has been a trial lawyer for thirty years. No one stopped him from cross examining any witness.

He raised some question with respect to evidence that we did not think of getting. He has the exact same right of subpoena as the Government has. We presented to you all of the evidence that we thought was pertinent. If Mr. Knachel felt that some other evidence which we did not present might be pertinent, there was nothing in the world stopping him from issuing a subpoena and calling in the right witnesses to produce that evidence for you here in the last few days.

Now, the entire attack of the Defense is fantastic, on Walter Sheridan, the former FBI Agent, the former investigator of the *National Security Agency, a career Government* employee, who testified on cross examination that he never met Presser in his life until March of 1958, that for some weird reason Sheridan would attempt to concoct a case against the defendant. My God, ladies and gentlemen of the jury, how can they ask you to consider that kind of a theory anyway? Sheridan was a Government investiga- [fol. 380] tor. What difference does it make to him? One case is no different than another case, any more than it does to me. That's my job. I am sent out on a case and I present it.

A lot was said about the fact that Sheridan did not take the invoice and have it fingerprinted, and a sample was shown you by tearing a piece of paper there. I believe if you will examine the invoice that the indications are that this was ripped across when an erasure was being made and then it was probably cut with a scissors. But be that as it may, the fact remains we have no jurisdiction over Walter Sheridan. I represent the Department of Justice headed up by the Attorney General. It is our job to try cases. Walter Sheridan was an investigator for an entirely different branch of the Government, for the Senate Committee. He had nothing to do with preparing this case, or trying to make out a criminal case. It isn't his job. His job was to go out and obtain evidence that the Senate Committee was interested in and bring it back to them, and that he did. The Committee hearing was held—and there was testimony concerning it—the hearing concerning this very document was held before the Senate Committee on the 17th of September, just four days after Sheridan picked the document up.

Now, it is obviously—well, I would like to present this to you for a minute. The Defense attorney got up before you here, ladies and gentlemen, and you will recall he went into his background and testified to some facts not in evidence. I can't do that because it would be highly improper for a Government attorney, supposing he knows something that you don't know, to in any way influence your decision. So I can't go into what did happen or didn't happen even if I know it and you don't. But to check all these documents to prepare for a committee hearing is a big and a burdensome job. That was Sheridan's duty, and he did it. As soon as that hearing was over, or shortly thereafter, the Senate did refer the case to the Department of Justice and the document was picked up then by the FBI. But the Department of Justice cannot expect the Senate Committee to hold its hearing in abeyance to serve our purposes.

Even if Sheridan was wrong, even if he made a mistake, [fol. 381] I think we all make mistakes at times. Mr. Knachel, after trying cases for thirty years, made a mistake or two. I think I can point to something in that respect from this record. He thought he was going to show you that Senator McClellan was here because he was campaigning for reelection, and so he tried to bring that out in examination of Senator McClellan, and all was very well for Mr. Knachel until the word came out that Senator McClellan was unopposed. Now, of course, that is a natural mistake for Mr. Knachel because he didn't look for that. I don't know, I suppose he said to himself, "I should have checked, I shouldn't have let myself get mousetrapped like that."

You will remember he inquired of Senator McClellan concerning a resolution, a resolution of the Senate, and he was obviously assuming that the Senate had passed it. That was for the purpose of showing that it would have been a matter of public record. But Senator McClellan told him no, the Senate never did pass it. Again an oversight.

I am not pointing that out as criticism of Mr. Knachel, and I am not going to point out any other mistakes, but merely to indicate to you that we all know Senator McClellan does his job and, again, the fingerprinting of that document had nothing to do with Sheridan's job.

If Sheridan was out here on an overall investigation, and not for the Senate Committee, and came to Cleveland to in some way get something on Mr. Presser, obviously he would have gone right to the FBI. But Sheridan was here on a legitimate job, he was on an investigation for the Senate Committee, to obtain information for them, and he brought the document back before the Senate Committee.

Now, the question was asked of you the jury why the defendant destroyed the invoice and didn't just throw it away. Well, it probably would be frivolous to suggest that maybe we should have asked the defendant. But we do have what appears to be a rather reasonable explanation for that. You will recall it was stipulated and brought out many times by the Defense that the checks which paid—or the check which [fol. 382] paid for those Rudolph Deutsch gifts, that that was already before the Committee, or in the Committee's possession.

Now, think back. Remember, we tried to get Sheridan to describe where he sat and what he did, who talked to him, and so on. There was a purpose in that. Sheridan was sitting down taking notes, and he was under observation both by Mrs. Passalaqua and by the defendant when the defendant came out. Now, a logical assumption for the defendant to make would be that at that time Sheridan was not making out a complete list, or writing out the complete items on the document, but was, rather, making an index of all the documents that were in the files. At the time the defendant destroyed the document he undoubtedly felt that Sheridan would have had the fact on his notes that such an invoice existed, but without all the other information, and that by going to the check they could establish as a matter of fact that that invoice had existed. So the defendant called Rudolph Deutsch, found out that the other records, or the records of the Rudolph Deutsch Company, were not available. Believing he was on safe ground he then did the only thing he was really interested in doing—he cut the names off. In that way no one could ever say to him the names were on, except Sheridan's uncorroborated testimony.

Now, some reference was made to a question I asked Mr. Sheridan as to whether or not a search was ever made of the Committee's files to determine whether the piece of paper or the torn portion of the invoice were ever turned over. This was an opinion question. It was my opinion that it was a proper question to ask to establish that these records were not, in fact, turned over. If it could be true, that through some strange circumstances the records, the torn portion of the invoice and the other piece of paper, were somehow sent to the Committee, in some manner, the chances are you would have a right to question as to whether or not there was an intent to obstruct the business of Congress. That was the only and sole reason for asking that question, as important and as very obvious as it was.

Now, a lot of mention has been made about Mr. Presser's authority to buy the gifts, the Christmas gifts. I tell you [fol. 383] again this is not the Government's case. Whether or not you feel he should have bought the gifts or should not have bought them should not influence you in one iota. The defendant is on trial here on one sole basis: obstructing the business of Congress. One thing we know he did not have, he did not have the authority to destroy the document when it was under subpoena, or to conceal the other one.

Some reference was made to the fact that Mr. Presser said he was in Washington, and what difference did it make. It made this difference, ladies and gentlemen of the jury. The defendant, William Presser, took that stand and obviously lied under oath. That makes a difference. Sure he could have destroyed the document the very evening Sheridan left. The fact as to whether he was in Washington was enlightening on the presumption that if the documents are under his control he was responsible for them. But it is not essential to our case that he should be here all the time. But what is important, the defendant took that stand and you will recall on cross examination he went into great detail on his trip, who he saw, where he stayed, what records there would be, and how convenient it was. His trip was at night time by car. There wouldn't be any record available of that. He didn't check into a hotel room himself. He went and slept in somebody else's suite. Again, no record. He couldn't recall why he had been to Washington, in the first place. Now, that does not make sense at all, ladies and gentlemen.

It would if he had gone to Washington at that time and if no question had ever come up about the trip until today, or until this past week. But the fact of the matter is that the issue of the torn invoice came up before the McClellan Committee on September 17th. That would be exactly four days after Sheridan was there, and exactly four or five days after the defendant William Presser tried to make you believe he was in Washington.

Now, naturally, the finger of suspicion would be pointed to him, and if he was, in fact, in Washington at that time that fact would have remained clearly in his memory, the purpose of his trip, who he talked to, where he went, what [fol. 384] he did. But all you have got is some vague story about the purpose of the trip, but very definite on the time he left the office, immediately after Sheridan left. He got in his car, drove to Washington, didn't go home at all for his clothes—he had them in a bag in the car—he didn't go home to eat, he ate on the highway, got into Washington, stayed in the Teamsters' suite, probably with Hoffa—Hoffa probably was there. That's the testimony. And, as a matter of courtesy, he would have gone to see Hoffa when he was there. I believe he said he saw him on the two days he was there—on two of the days, the first two days.

Now, common sense tells you that Hoffa is not going to place a long distance call from Washington to Cleveland to talk to Presser if Presser is sitting in his office or living in his hotel suite.

Now, you will recall on cross examination the telephone official from Washington testified that if the call had been received by somebody else the ticket would have so shown. But we do know the first call to Presser was at his office, then another call to Presser at his office, this time transferred to his home, and that was an 18 minute phone call.

Again, the only point of all this, it does tend to show his continued presence here in Cleveland and the greater probability of his continued control of the document. But more important, ladies and gentlemen of the jury, if the defendant went on this stand and lied to you under oath, certainly you are not going to believe any testimony he may give you as to the fact that he did not tear the document.

Now, I recall quite a few years ago if somebody didn't recall a man's name, reference was made to the forgotten man. Well, we have a forgotten man in this case—Charlie Schaeffer. Charlie Schaeffer took the stand. The defendant was sitting right here, he heard his testimony. Not one word of cross examination was made of Charlie Schaeffer, not one word from the defendant in any attempt to explain away that damaging testimony. Again, I want you to remember Schaeffer's testimony that his call was made to Deutsch at the request of Presser, and the call was made at the very time that that document was destroyed.

[fol. 385] Now, some reference was made about Sheridan's handling the transaction the way he did. I think Sheridan himself explained that on the stand, and he explained when he picked the document up from Mr. Presser he said, "I should have known better than to trust you." And the answer was, "You have your job to do, I have mine."

Now, ladies and gentlemen of the jury, I told you at the start, or I suggested that possibly during the course of the trial we would inform you later why a case of this nature is important. Reference was made to the fact of Lincoln's speech, that our government shall not perish. God knows we all feel the same way. But our government is meaningless unless it is a government of laws and not a government of men. There are laws which are passed, and those laws must be obeyed by you, by me, by Judge Jones, by everyone in this court room.

There are no exceptions. I can't come to you and say, "Well, I have a wife and family, therefore I can break the law." I can't come and say, "I'm a veteran, I have a right to break the law." The only thing that makes this country great is the fact that there are no privileged classes. Each and every man must stand on his own, and if he breaks the law let him be prosecuted solely for the thing that he did, nothing else, and whether he is a good union leader or a bad one, or what his political affiliations are, or any other consideration.

The sole thing is if you break the law, or if it appears that you do, you should stand trial like anyone else, and the jury should be the first to decide on guilt or innocence. Yet the jury would have, I think, a hard time deciding anything if it wasn't for the fact that there are such things as subpoenaes. These subpoenaes can be used both by the Government and the Defense to force witnesses to come before you, even if they don't want to, and to bring with them such records as may be important in the case. This, naturally, is the cornerstone of our judicial system. If we didn't have this we may as well throw the jury system away. The exact same thing aids in the Congress. If we elect men to Congress we expect them, or hope, at least, that they will do their duty and base their decisions on facts. The only way Congress can get before it the facts that it needs for legislation is by its committee hearing power and by the power of subpoena.

[fol. 386] The issue in this case is whether William Presser has a right to raise his hand and say, "Stop the Congress, this you can't see." That is what Mr. Presser did, and that is why we are going to ask you, ladies and gentlemen of the jury, to return a verdict of guilty.

REPORTER'S CERTIFICATE CORRECTING THE TRANSCRIPT

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Certificate

I, A. V. Jarvela, Official Court Reporter for the United States District Court, Northern District of Ohio, Eastern

Division, do hereby certify that I have checked my original shorthand notes in the above entitled action and at page 535 of the typewritten transcript I find the following error in transcription:

Beginning at line 21 the record as transcribed reads: "The purpose, again, of reading that testimony was not only to corroborate Mr. Sheridan's specific testimony" etc. It should read: "The purpose, again, of reading that testimony was not in any way to corroborate Mr. Sheridan's specific testimony" etc.

A. V. Jarvela, Official Court Reporter.

MEMORANDUM RE REQUESTED CHARGES

JONES, J.:

The attached requests for instructions to the jury (Government's numbered 1-10, incl., Defendant's numbered 1-3, incl.) in this case were submitted to me in chambers and no official reporter being present they did not get into the record. The proposed requests were discussed with counsel for the parties in chambers prior to the giving of the charge and I told counsel what action I proposed to take. No objections were indicated by counsel to my proposed action. My action upon the requests was and is indicated in pencil. "R" means refused; "In" or "G" means given or included [fol. 387] in my charge. Some of the Government's requests were given or included, others refused; all of defendant's requests were included in the charge to the jury. No exceptions were taken to the charge or the summation of Senator McClellan's testimony, as will appear in the Memorandum dated June 24, 1960, denying the defendant's motion for new trial.

These papers should be included in the record on appeal for whatever purposes the parties desire to use them.

...., United States District Judge.

Nov. 17, 1960.

Government's Requests

Prayer No. 1

You are instructed as a matter of law that the Senate Select Committee was pursuing a legitimate legislative purpose in inquiring into improper activities in the labor-management field. You are further instructed as a matter of law that the invoice in question and the envelope and list of names which were allegedly destroyed or concealed from the Committee were documents which bore a reasonable relation to the subject matter of the Committee's inquiry and were relevant to it.

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Defendant's Requests

Prayer No. 1

I charge you as a matter of law that before there can be any conviction of the defendant in this case the evidence must be so clear and convincing as to exclude from your minds, and from the mind of each one of you, all reasonable doubt of the guilt of the defendant.

A reasonable doubt is an honest uncertainty existing in the minds of a candid, diligent and impartial juror after full and careful consideration of all of the evidence with a view of ascertaining the truth.

Prayer No. 2

I charge you as a matter of law that in order to justify a verdict of guilty against the defendant in this case, based [fol. 388] in whole or in part upon circumstantial evidence, the facts in the chain of circumstances shown by the evidence must not only be consistent with guilt of the defendant, but must be inconsistent with every reasonable supposition of innocence.

Prayer No. 3

I charge you as a matter of law that if you find from the evidence that the defendant has established his previous good character, that fact, when considered with all the other evidence in this case, may itself generate a reasonable doubt.

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[fol. 389]

Excerpt From the Interim Report of the Committee

Report No. 1417

Senate, 85th Congress, 2d Session

Interim Report

March 24 (legislative day March 17), 1958.—
Ordered to be printed with illustrations

Mr. McClellan, from the Select Committee on Improper Activities in the Labor or Management Field, submitted the following report:

* * * * * * *

Special Findings—International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America

The United States Senate Select Committee on Improper Activities in the Labor or Management Field during the first year of its existence has made a detailed study of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. The committee feels that what it has uncovered relative to that union calls for a special finding of fact.

Well-nigh incalculable power over our economy is wielded by this union. Not only is it the richest and biggest union in the country, but it is the most strategic. The teamsters assert jurisdiction over every product and commodity in this country which moves on wheels, including milk and other foods, clothing, furniture, appliances, coal, oil, automobiles, steel, lumber, construction materials, and daily newspapers. Moreover, they assert jurisdiction over all matters which impinge on their jurisdiction, however lightly. Teamsters disapproval can break another union's strike; they can close stores by refusing deliveries, close hotels by refusing to pick up their refuse. The teamsters can, in short, stop the Nation's economic pulse.

[fol. 390] Whoever controls the teamsters, then, controls much more that the immediate destinies of 1,500,000 union members; he and his lieutenants reach into every household in the land. Such is the formidable power and such is the awesome responsibility that the one would never be disassociated from the other by men of conscience.

It would be heartening, indeed, to be able to describe the men at the teamsters' wheel as men of conscience in whom this trust is well-placed; unhappily, the opposite is spectacularly true. The committee finds that the most outstanding traits of the teamsters' leadership are dishonesty and corruption. They present a major threat to the economy and to law-enforcement in the United States.

The officials of the teamsters union have, in the committee's opinion, disgracefully betrayed their own members. Time and time again, when the clear choice presented itself—on the one hand, the furthering of the welfare of the members, and on the other hand, advancing their own personal interests—these teamster officials chose the latter alternative.

Particular condemnation must fall on the presidents, Mr. Beck and Mr. Hoffa, and the general executive board members.

The committee presents this bill of particulars against the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America:

1. Teamster officials have crushed democracy within the union's ranks. They have rigged elections, hoodwinked and abused their own membership, and lied to them about the conduct of their affairs. They have advanced the cause of union dictatorship and have perverted or ignored their own constitution and bylaws.

Hoffa, with the help of Einar Mohn and Dave Beck, established through "Tony Ducks" Corallo and John Dioguardi phony local in New York City in order to gain the necessary votes to assure the election of Mr. Hoffa's candidate, John O'Rourke, as president of joint council 16. Thereafter, votes were cast in the names of individuals listed as officers and delegates who claimed that they not only did not participate in the election but did not even know that they were members of a labor organization.

[fol. 391] At the recent international convention of the teamsters in Miami, Mr. Beck and Mr. Hoffa, with the help of their bevy of lawyers, made a mockery of the international constitution. They showed that they regarded the constitution as a piece of paper to be obeyed or ignored as it might benefit them. In this instance, the decision was to waive the constitution. Without this action, Mr. Hoffa could not have been elected teamster president.

Delegates from a New York local who participated actively in the convention were not elected until 10 days after the convention was over. The ultimate cynicism of the Miami situation is demonstrated, however, by the colloquy which took place between the committee and a Hoffa supporter from Detroit. He was asked if he was a delegate to the convention and he replied that he was. He was asked when he was elected and he replied that there was to be a membership meeting that night to consider the nominations and election of delegates and he was to be elected at that time.

2. They have acted to the detriment of their own members by entering into collusive agreements with management for the purpose of power, money and/or self-aggrandizement. They have promoted and condoned the signing of "sweetheart" contracts.

Many Puerto Rican and Negro workers belonging to the teamster locals established and sponsored by Hoffa in New York receive for a 40-hour week the minimum wage of $40, plus $1 to pay their union dues. The working conditions and the treatment that these people have received from these teamster union officials who signed "sweetheart" contracts with greedy employers is a disgrace not only to trade unionism but to the moral principles on which this country was built.

James R. Hoffa used his official teamster position to break the strike of teamster members against the Commercial Carriers Corp. in Flint, Mich., and his wife and the wife of his first lieutenant, Owen Bert Brennan, secretly went into the trucking business under the sponsorship of Commercial Carriers and with the financial help and legal assistance of that company.

[fol. 392] 3. Teamster officials have entered into highly improper business relations with the officials of companies with whom they bargained.

Dave Beck sought and obtained special favors from Anheuser-Busch, Inc., for a beer distributorship in which his son had an interest.

Beck importuned the Fruehauf Trailer Co., and Associated Transport, Inc., for a $200,000 loan and many other favors, which he received.

Beck maintained a financial association over many years with Nathan Shefferman while the Chicago management consultant represented a number of large and small employers, many of whom had contracts with the teamsters union.

Frank Brewster, chairman of the Western Conference of Teamsters, was a business partner in a racing stable with Fred Galeno, the leader of a juke box association with whom the teamsters negotiated contracts.

James Hoffa, as noted above, not only entered into a business relationship with Commercial Carriers Corp. through his wife, to the detriment of his union members, but also participated in a number of business ventures with Carney Matheson, attorney and negotiator for some of the Nation's largest trucking associations.

Hoffa sold another defunct trucking company that he owned in his wife's name to William O. Bridge, another Michigan trucker, at a tidy profit to himself.

A large number of other Hoffa associates and lieutenants owned companies with whom the teamsters had contracts.

Zigmont Snyder, whom Hoffa made a business agent of the teamsters union, had a number of companies which should have employed teamsters but which Mr. Snyder saw fit to operate nonunion, paying his employees shamefully low wages.

4. The teamster leaders have entered into highly improper business relationships with the insurance companies which handle the millions of dollars of health, welfare, and pension funds. They have approached banks which are the

repositories of the accounts of union funds for special favors and loans at unusually low rates of interest. [fol. 393] Dave Beck sought and received some $300,000 in loans from the Occidental Life Insurance Co. at an admittedly lower rate than any other of Occidental's clients.

Beck, in addition to receiving low-interest loans from the Seattle First National Bank, put pressure on that bank to invest $1 million in mortgage money through the National Mortgage Co. of Seattle, in which a relative had a one-third interest, that interest having been financed by Beck himself.

The facts surrounding the dissolution of the stable in which Frank Brewster, chairman of the Western Conference of Teamsters, was a partner with George Newell, the broker for the western conference health and welfare funds, show a most abnormal relationship, with a large profit being taken by Brewster and a large loss accepted by Newell without protest.

James R. Hoffa was a business partner with Allen Dorfman and his mother, Rose Dorfman, the brokers for the Central Conference of Teamsters' health and welfare fund. The Hoffa-Dorfman ventures included a Wisconsin girls' camp and an oil development project in North Dakota.

Hoffa pressured Detroit banks which held large teamster accounts to make loans to the teamster Florida land scheme in which he had an interest.

5. Teamster leaders encouraged and negotiated top-down contracts—agreements made between top management and top labor which resulted in forced entry of employees into a union not of their choice.

Although there were a number of instances of this, particularly in the East, one of the most shocking was the signing of the contract between Harold Gibbons, now the first vice president of the teamsters, and the Englander Co., a mattress manufacturer in Chicago. Nine plants of the Englander Co. were suddenly placed under teamsters' jurisdiction with the employees treated as chattels and denied the right of exercising free choice to indicate whether they wanted the teamsters as their bargaining representative.

6. Teamster officials took hundreds of thousands of dollars of union funds for their own personal use.

Dave Beck took at least $370,000 from the funds of the Western Conference of Teamsters, joint council 28 building fund, and joint council 42 promotional fund.

[fol. 394] Frank Brewster took thousands of dollars from local 174 and the Western Conference of Teamsters for the down payment on his home in Palm Springs, Calif., for the operation of his racing stable, for the purchase of his clothes, and for other personal bills.

James Hoffa used union funds to pay the hotel bill and other expenses of his brother, William Hoffa, and his family while the former was hiding out from law-enforcement officers on a charge of armed robbery. On another occasion, several thousands of dollars in union funds were used by Hoffa to send an aide to California in search of his brother's missing wife.

Hoffa sent two union business agents with full salaries and expenses to work for 4 months on a hunting and fishing camp which Hoffa and Bert Brennan owned in their wives' maiden names, at a cost to the union of some $3,700.

7. Teamster officials have used millions of dollars of union funds without the authorization or knowledge of their members. This money was passed on to friends and associates as if the union's treasury were the union officials' personal property.

Funds of the Western Conference of Teamsters were put up by Frank Brewster to buy stock for various officials who did not have ready cash at the time.

Frank Brewster put $440,000 into what was a dying Canadian truckline through devious financial transactions.

Teamsters union officials in Tennessee withdrew $18,500 from the union treasury, which one of them openly boasted was to "fix" a case in which they were indicted for assorted acts of violence.

James R. Hoffa took one-half million dollars from the funds of local 299 in Detroit and transferred them to a Florida bank to induce the bank to lend money to a land scheme in Florida in which he had an interest. Meanwhile, the promoter of the land scheme was on the payroll of the teamsters and was receiving some $90,000 in salary and expenses.

Although Hoffa stated he withdrew teamster funds from a Detroit bank because they would not lend $500 to a union member, he lent $150,000 in teamster funds to a friend, Harold Mark, who then turned around and lent him $25,000. [fol. 395] Hoffa lent $50,000 in teamster funds to a racetrack where his partner, Bert Brennan, had a string of horses.

$40,000 was lent to an individual who was unable to get a loan from a bank because he had been arrested 22 times.

$1,200,000 in union funds was lent to a department store operated by a friend of a teamster official which was in financial difficulties and was being struck by a fellow AFL union.

Hoffa continued the salaries ($85,000 worth) of four Michigan teamster officials who were friends of his, after they were convicted of extortion and sent to the penitentiary.

Another $55,000 of union members' dues money was used by Hoffa and Harold Gibbons to defend several other union officials who were convicted of dynamiting and extorting money from employers.

More than $5,000 was expended by James Hoffa and Harold Gibbons so that a teamster friend could take an appeal to the United States Supreme Court to argue that illicitly received funds do not constitute income.

8. They have condoned violence as the proper method for settling labor-management and inter-union disputes.

An organized teamster goon squad operating out of Tennessee was used to whip employers and union members into line in that State and in the surrounding area. Leaders of the goon squad were W. A. Smith, who has a record of 17 arrests and 12 convictions, and ex-convict Glenn W. Smith, whose extensive record includes 2 convictions for armed robbery. These and other teamster officials were identified before the committee with arsons, dynamitings, and brutal beatings of employees, nonstrikers, and even members of their own union.

The committee developed a pattern of extreme and extensive violence in Scranton, Pa., and also in Flint, Mich., where a teamster auto was used in an attempt to run down and kill an employee of a company which was being st[illegible] by a teamster local.

9. Teamster officials have seriously abused the right of organizational picketing, using it as a weapon of extortion and terror. In all of these instances, the wishes, desires, and interests of the employees involved as to whether they wished to be unionized were never considered.
[fol. 396] In Portland, Oreg., pickets were placed in front of taverns which did not use the pinball machines of an underworld combine which was seeking to take over the city.

In New York, picket lines were established in front of small businesses by teamster locals controlled by the Hoffa-sponsored Dio-Corallo group, with only payoffs bringing the removal of the pickets.

The same system was used on small employers in Flint, Mich., with payoffs in this instance going to the official through George Kamenow, a representative of Nathan Shefferman.

10. They have supported corrupt unions in their disputes with honest unions.

James Hoffa and Harold Gibbons, with the backing of Dave Beck, supported the International Longshoremen's Association after it had been ousted by the AFL for corruption. Mr. Hoffa went so far as to offer this venal group a loan of some $400,000 while it was actively fighting the AFL.

Hoffa supported John Dioguardi and his corrupt UAW-AFL locals against Tom Hickey, a vice president of the teamsters, in opposition to the teamsters' own efforts to organize the taxicab drivers in the city of New York.

11. They have indiscriminately used the power of placing locals under trusteeship and kept these union entities in servitude when it served the interests of the union leadership to do so. When a local is under trusteeship, its members completely lose control over their finances and the right to elect their own officials.

Some 13 percent of all the locals in the teamsters union are under trusteeship, teamster officials have admitted before the committee that they do not know the reason why some were put under trusteeship or why they remain in that state at the present time. Some of the locals have been under trusteeship for 15 years. One individual, through trusteeship, can control the destinies of many people. Mr. Hoffa is the trustee of some 17 different locals.

When the membership revolted against four officials of a local in Pontiac, Mich., after they had been accused of extortion, the international put the local under trusteeship, making Jimmy Hoffa the trustee. He then turned around [fol. 397] and appointed two of the same men as business agents to run the affairs of the local.

The stench of corruption permeates many of the executive board of the International Brotherhood of Teamsters in a number of other ways as well.

Sidney L. Brennan, the teamsters' third vice president, was convicted in Minneapolis with other union officials for accepting a $5,000 bribe from a company to speed a strike settlement. In tune with teamster union morality, dues-paying members were compelled to foot the bill for his defense, and he remained in a position of trust and responsibility until the recent teamster convention.

Harry Tevis, the 11th vice president, appeared at a testimonial dinner for the secretary-treasurer of the Scranton, Pa., teamster local and three other labor officials convicted of conspiracy in the dynamiting of a home under construction, and vowed that no disciplinary action would be taken by the international.

The teamsters recently installed a new executive board, which includes vice presidents of equally dubious character. Owen Bert Brennan, the righthand man of James R. Hoffa, took the fifth amendment before this committee and refused to explain a number of questionable financial transactions in which he had participated; John O'Rourke took the fifth amendment before the committee and refused to tell the part he played in the infiltration of thugs, headed by Corallo and Dioguardi, into the teamster movement in New York; Murray L. (Dusty) Miller, chairman of the Southern Conference of Teamsters and a newly elected teamster vice president, condoned the use of violence by Glenn W. and W. A. Smith throughout the Southern States and in one case along with Hoffa actually interceded with an employer to have him drop charges against W. A. Smith after an employee of that company had been beaten; international trustee Raymond Cohen took the fifth amendment before the committee, refusing to tell about the use of union funds for the purchase of his $17,500 yacht—and on and on and on.

While the Becks and O'Rourkes and Brewsters are bad enough, the committee feels that the newly elected president [fol. 398] of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, James R. Hoffa, presents an even greater threat to the welfare of this country. James Hoffa, from his early years in the labor movement, has formed an alliance with the kingpins of the Nation's underworld, a partnership which has moved him swiftly up through the ranks of the teamster hierarchy to his present powerful post. Hoffa's first association was with the Detroit mob. He parlayed this into his equally close connections with underworld figures in Illinois, New York, Ohio, Indiana, Nevada, and other parts of the country.

Hoffa speaks of "rehabilitation" as the justification for his consorting with criminals and hoodlums. If an occasional law violator had found his way into the teamster organization, this might be a noble sentiment. But on the basis of these hearings, it appears to the committee that a criminal background was a prerequisite for job placement and advancement within the teamster firmament.

The word "rehabilitation" can hardly be applied to such Hoffa stalwarts and supporters as John Dioguardi, three-time convicted labor racketeer and suspected instigator of the blinding of columnist Victor Riesel; or Gerald Connelly, the Minneapolis dynamiter, who fled to a teamster job in the Minnesota city after being linked to a murder in Miami; or Eugene (Jimmy) James, who stands accused by the Douglas-Ives subcommittee of the $900,000 looting of the Laundry Workers International Union welfare funds or Herman and Frank Kierdorf, Uncle Herman and Nephew Frank, who landed comfortable jobs with Hoffa-controlled locals after serving penitentiary sentences for armed robbery; or Ziggy Snyder, the Detroit waterfront tough who made a tidy side living in business enterprises which paid American citizens the munificent sum of $1.25 a day; or the "Pontiac Four," Dan Keating, Louis Linteau, Sam Marrosso, and Mike Nicoletti, on whose behalf Hoffa poured out some $85,000 in union dues funds after they were convicted of extorting money from contractors; or Angelo Meli, the Detroit prohibition hoodlum, whose record is so unsavory the United States Government is presently attempting to denaturalize him; or Barney Baker, the former New [fol. 399] York waterfront head knocker and tough, who occupies a position of trust near the teamster throne; or Samuel (Shorty) Feldman, the Philadelphia safecracker, for whom Hoffa attempted to get a union charter; or Ernie Belles, who was kicked out of a Buffalo local for embezzling $38,000 and was given the presidency of another local in Miami; or Joseph Glimco, twice arrested for murder, the crony of Capone gang mobsters, who is the trustee of a Chicago local in Hoffa's Central Conference; or Louis (Babe) Triscaro, the Ohio reformatory graduate for whom Hoffa arranged a testimony (sic) dinner; or William Presser, head of the Ohio Conference of Teamsters, who shook down jukebox operators in Toledo; or Louis Berra, convicted of extorting money from St. Louis contractors, for whose appeals to the United States Supreme Court Hoffa spent the funds of teamster members; or Harry Friedman, appointed head of an Ohio local after emerging from a Federal penitentiary; or Paul (Red) Dorfman, who reached ascendancy in the Chicago labor movement after the murder of his predecessor and who has maintained a continuous association with Chicago mobsters; or even Hoffa's own brother, William Hoffa, a twice-convicted felon placed as a business agent of the Pontiac local.

This, the committee hastens to point out, is an incomplete list of Hoffa's friends, associates, and ardent supporters. We could go on to mention John Bitonti, Roland McMasters, Al Vignali, Larry Welsh, Henry Newman, Cecil Watts, Frank Fitzsimmons, Clyde Crosby, Sam Berger, Glenn W. Smith, W. A. Smith, Eugene Williams, and Abe Gordon, all friends and associates of Hoffa and all men with criminal records. But it suffices, in the committee's view, to draw the conclusion that Hoffa runs a hoodlum empire, the members of which are steeped in iniquity and dedicated to the proposition that no thug need starve if there is a teamster payroll handy.

Nothing in Mr. Hoffa's record, in his complete refusal to abide by the ethical practices that guide responsible union leaders, and in the compilation of his close friends and associates, gives much comfort and hope for the future. The power of the teamsters union president is so extraordinary that the committee finds the fact this power is now lodged [fol. 400] in the hands of a man such as Hoffa tragic for the teamsters union and dangerous for the country at large.

Legislative Recommendations

The United States Senate Select Committee on Improper Activities in the Labor or Management Field recommends that the Congress of the United States give attention to the passage of legislation to curb abuses uncovered in five areas during our first year of hearings.

These recommendations are—

1. Legislation to regulate and control pension, health and welfare funds;
2. Legislation to regulate and control union funds;
3. Legislation to insure union democracy;
4. Legislation to curb activities of middlemen in labor-management disputes;
5. Legislation to clarify the "no man's land" in labor-management relations.

It must be noted that the committee has explored a number of other areas in labor-management relations and plans to present legislative proposals covering those areas at a future time. For instance, much testimony has been heard during past months on the infiltration of gangsters and racketeers into the labor movement. Additional testimony on this subject will be heard during the coming year and this, along with other subjects of committee interest, such as some phases of organizational picketing on which we

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have already had some testimony, will provide the basis for further legislative recommendations.

Pension, Health and Welfare Funds

Abuses in the administration of union and management health and welfare funds were first highlighted by hearings of the Douglas-Ives subcommittee of the United States Senate Committee on Labor and Public Welfare during the 83d and 84th Congresses. The Senate Select Committee on Improper Activities in the Labor or Management Field has also heard testimony on these funds, particularly in rela- [fol. 401] tion to the administration of the Western Conference of Teamsters Health and Welfare Fund and the Central Conference of Teamsters Health and Welfare Fund.

In connection with the former, the committee has made a finding that the broker for the Western Conference of Teamsters Health and Welfare Fund received excessive commissions, obtained the business without having to go through the formality of bidding, and engaged in business activities with the chairman of the Western Conference of Teamsters Health and Welfare Fund, Frank W. Brewster. A similar situation was brought out in testimony with regard to the Central Conference of Teamsters Health and Welfare Fund, where it was shown that James P. Hoffa, chairman of the Central Conference of Teamsters Health and Welfare Fund, had business relations with Allen and Rose Dorfman, owners of the Union Insurance Agency of Illinois, the carrier of this fund.

There is almost complete unanimity in labor and management circles that union and management pension, health, and welfare funds should be subjected to some Federal regulations and control. Legislation to this end has already been introduced, and the committee strongly recommends that a bill be expeditiously enacted which will require the registration, reporting, and disclosure of administration of pension, health, and welfare funds.

Union Funds

The committee report has highlighted that some $10 million in union funds have been either stolen, embezzled, or misused. As the committee report points out, this money represents only those funds which have been the subject of committee testimony covering a period of 15 years. Before the establishment of the Senate Select Committee on Improper Activities in the Labor or Management Field, the Permanent Subcommittee on Investigations of the Senate Committee on Government Operations held some hearings concerning the administration of certain laws governing labor unions. The interest of the subcommittee was principally focused on the provisions of the Taft-Hartley Act which called for the filing of financial statements by unions in order for them to gain certification before the National Labor Relations Board. These hearings conclusively [fol. 402] showed that, as the law is presently administered and interpreted by the Department of Labor and the NLRB, there is no check made as to whether or not the financial reports filed by unions are true or false. The mere filing of the report is sufficient for compliance, and the report is then stored away without any effort to determine its validity or accuracy.

The committee recommends that Federal legislation be enacted closing up the present loopholes in the law concerning the filing of these financial statements. It further recommends that these financial statements be required to be accurate and complete, that there be a method for the checking of their veracity and provisions for bringing legal action against unions filing false statements and against the officers of the unions testifying to these false statements. The committee feels there should be a provision in the law making it a Federal crime, punishable by a prison sentence, for the wilful filing of a false or incomplete financial statement.

Since union-dues moneys, as well as health and welfare funds, are in actuality a trust, being held for the members of the union by their officers, the committee feels that attention should be given to placing certain restrictions on the use of these funds, such as are now imposed on banks and other institutions which act as repositories and administrators for trust funds.

This type of legislation, in the committee's opinion, would go a long way toward preventing wholesale misappropriation and misuse of union funds such as that disclosed by committee testimony.

Union Democracy

The committee recommends that legislation be enacted assuring democratic procedures in labor unions. In the committee's opinion, legislation should be directed, though not limited, to three principal ends:

1. The periodic election of officers;

2. The use of secret ballots in union elections and other vital union decisions;

3. A limitation on the right of internationals to place local unions in trusteeship or supervisorship.

[fol. 403] Much that is elicited in the committee's findings of misconduct by union officials can be substantially improved, in the committee's view, by a revitalization of the democratic processes of labor unions. Some of the burden of this revitalization will have to fall on the union members themselves. They are in some measure responsible for the mismanagement this committee may have turned up, through inertia or lack of interest in the affairs of their unions. While the committee feels that the bulk of American unions operate fairly and democratically and agrees with the principle that the Federal Government should not interfere in their normal functioning, it is still of the opinion that certain basic standards of democratic procedure should be established by law. In this regard, therefore, it recommends that Federal legislation be enacted to guarantee them a right periodically to elect their officers, a right to cast their ballots in secret, and a restriction on the baseless imposition of trusteeships and supervisorships for periods as long as 30 years.

Management Middlemen

Testimony during the committee's hearings concerning the activities of Nathan W. Shefferman and Labor Relations Associates of Chicago, Inc., showed that the Taft-Hartley law is largely silent in relation to management middlemen such as Sheffermen. It was shown that Shefferman's agents flitted about the country from one client to another, violating the Taft-Hartley law with seeming impunity. A top attorney for the NLRB admitted that the present law is not sufficient to deal with this type of activity. It is the committee's opinion that for such a middleman to be found guilty of unfair labor practices in one community and then to go on to another community and commit the same offenses reveals a defect in the law as it is now written.

It is the committee's opinion, therefore, that some legislation is needed to control the activities of these middlemen who act on behalf of management clients in various parts of the country. Some steps should be taken to extend the liability for unfair labor practices to the middlemen retained by employers who represent them in management disputes.

[fol. 404]

"No Man's Land"

Testimony before the committee revealed that some employers have had no access to either the National Labor Relations Board or any comparable State agency. In many instances it was found that the fact that the National Labor Relations Board does not take jurisdiction in certain cases does not automatically turn over the case to a State board. In the committee's inquiry into activities in the New York area it was shown that exploitation of workers and circumvention of legitimate labor organizations were made possible because employers had no recourse to any governmental agency. To solve the no man's land problem, therefore, it is recommended that the NLRB should exercise its jurisdiction to the greatest extent practicable, and, further, that any State or Territory should be authorized to assume and assert jurisdiction over labor disputes over which the Board declines jurisdiction.

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[fol. 406]

MINUTE ENTRY OF ARGUMENT AND SUBMISSION—April 24, 1961

Before: SIMONS, Senior Judge, MCALLISTER and CECIL, Circuit Judges.

This cause is argued by John G. Cardinal for Defendant-Appellant and by Paul J. Komives for Plaintiff-Appellee and is submitted to the court.

[fol. 407] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
No: 14326

UNITED STATES OF AMERICA, Plaintiff-Appellee,
v.
WILLIAM PRESSER, Defendant-Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO, EASTERN DIVISION

OPINION—Decided July 6, 1961

Before SIMONS, Senior Circuit Judge, MCALLISTER and CECIL, Circuit Judges.

MCALLISTER, Circuit Judge. From a conviction on a charge of obstructing justice, in violation of a federal criminal statute, through mutilation and concealment of records sought by a congressional investigating committee, William Presser appeals. He claims the District Court committed error in admitting the testimony of Senator John L. McClellan as evidence of the question under inquiry by the Committee; the pertinency and relevancy of names on a paper and invoice allegedly withheld or mutilated; knowledge on Presser's part that such names were pertinent or relevant to the question under inquiry by the Committee; and the testimony of an investigator for the Committee. Appellant also contends that the subpoena duces tecum issued for the production of documents, the violation of which subpoena is the foundation for the indictment, was not issued in accordance with the law, the rules of the Senate, the rules of procedure of the Committee, and the Senate resolution authorizing the establishment of the Committee.

[fol. 408] During the period in question, Presser was President of Joint Council No. 41 of the International Brotherhood of Teamsters. At that time, the Senate Select Committee on Improper Activities in the Labor or Management Field, was conducting an investigation, including the affairs of certain officers connected with the Teamsters Union. In carrying out its investigation, the Committee dispatched an investigator, Walter J. Sheridan, to Ohio, to examine the books and records of certain organizations, including those affecting the relations between former Senator Bender and various officials of the Teamsters Union. Mr. Bender had previously been appointed by the provisional president, James R. Hoffa, as chairman of a committee to investigate the Union and the practices carried on by it.

Mr. Sheridan, the investigator for the Senate Committee came to Cleveland and served the subpoena upon Presser on March 21, 1958. Arrangements were made by the Committee and the Union whereby the subpoenaed records would be turned over to the office of the Committee in Cleveland rather than be taken to Washington. Sometime later, Sheridan, according to his testimony, returned to appellant's office on September 9, 1958, and asked for correspondence files that had not been previously given over in compliance with the subpoena; and, in going through the files, Sheridan found the envelope and invoice containing the list of names in question. The invoice showed a sale of eight champagne buckets at $100.00 each and contained eight names to whom the buckets were to be delivered, one of which was the name of former Senator

Bender. It appeared that the buckets were to be Christmas gifts from the Union to the eight named persons.

As Senator McClellan testified, the question was not whether an officer of the Union sent a champagne bucket to another officer, but "it is a question of using Union dues money for such purposes"—and the use of Union dues money was one of the questions the Committee was investigating. Sheridan, after examining the documents, left them, including the invoice, in Presser's possession in order to permit the latter to photostat them: and, when, four days later, Sheridan returned, the envelope which bore the notation "Christmas list," and a sheet of paper which listed the names above mentioned were missing: and the invoice itself had been torn in such a manner as to remove the eight names listed on it. When Sheridan realized that [fol. 409] the envelope and sheet of paper containing the names had been removed from the files, and the invoice torn in such a way that the names were missing, he stated that he turned to Presser and said: "I should have known better than to trust you," and that Presser replied: "You have your job to do, I have mine." We accept this evidence as true on this appeal from a verdict and judgment in favor of the government.

However, with great awareness of the situation, Sheridan immediately sought out the original seller of the champagne buckets and was able to secure from him the duplicate copy of the invoice, which contained the eight names that had been torn off the original invoice.

On the trial, Presser maintained that he could not have done anything to the invoice because he went to Washington, D. C. the same day that Sheridan called at his office, and remained there until September 12, just before Sheridan returned to his office. Presser testified that during the time he was in Washington, he visited James R. Hoffa, and stayed in the suite of rooms maintained by the International Union of Teamsters, which is also used by Hoffa.

The government, however, proved that during the period Presser claimed he was staying in Washington and seeing Hoffa, Hoffa had been engaged in making two person-to-person calls to Presser, one to his home, and one to his office, both in Cleveland, one conversation lasting three minutes, and the other conversation lasting eighteen minutes. Moreover, in controverting Presser's claim that he had nothing to do with the removal of the "Christmas list" envelope, the paper containing the names of the persons to whom the Union was making gifts of champagne buckets, and the tearing from the invoice the names of the persons to whom the champagne buckets were to be delivered, the government proved that, at this critical period, Presser was calling, by telephone, the salesman who had sold the champagne buckets three years before in an effort to secure the duplicate copy of the invoice that had been torn, which, it afterward appeared, the salesman was unable to get from the seller.

Here was the turning point of the case—the government's proof of the telephone calls from Hoffa in Washington to Presser in Cleveland, at the very time when Presser testified he was in Washington seeing Hoffa, and the further proof of the government of appellant's seeking in-[fol. 410] formation as to whether he could secure the duplicate invoice in question at a time when the original invoice had just been mutilated.

As Judge Paul Jones, the dean of federal judges, and the most experienced trial judge in the circuit, pointed out so fluently in his order denying a new trial: "Except for these circumstances, the jury may well have entertained a reasonable doubt as to defendant's guilt. But, no one that witnessed the event could have failed to sense the climactic effect of this evidence on the jury. It seemed to me that this evidence more than anything else influenced the jury's verdict."

We concur with Judge Jones in his opinion denying motion for judgment of acquittal or for a new trial, in the conclusion that the testimony of Senator McClellan was properly admissible in evidence; the trial court was correct in overruling objections based on various grounds to the testimony of Senator McClellan; and we agree with the District Court that there was nothing unlawful in the method used by the Committee in issuing the subpoena duces tecum. Moreover, appellant knew that the documents in question were wanted by the Committee, and, in such a case the existence of a valid subpoena is not vital to the charge of obstruction of justice. A review of the record does not disclose that appellant was in any way deprived of a fair trial by reason of misstatement and misquotation of evidence by counsel for the government. The evidence presented was amply sufficient to sustain a verdict of guilty. Other claimed errors are not meritorious.

In accordance with the foregoing, the judgment of the District Court is affirmed.

[fol. 411]

IN UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

Appeal from the United States District Court for the Northern District of Ohio.

JUDGMENT—July 6, 1961

This Cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Ohio, and was argued by counsel.

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

Approved for entry:

Thomas F. McAllister, United States Circuit Judge.

[fol. 412] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 413]

SUPREME COURT OF THE UNITED STATES

No. 278—October Term, 1961

WILLIAM PRESSER, Petitioner,

vs.

UNITED STATES.

ORDER ALLOWING CERTIORARI—October 23, 1961

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Office-Supreme Court, U.S.
FILED
AUG 1 1961
JAMES R. BROWNING, Clerk

18

In the Supreme Court of the United States

OCTOBER TERM, 196~~1~~2.

No. ~~278~~ 25

WILLIAM PRESSER,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI
To the United States Court of Appeals
For the Sixth Circuit.

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THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—MAIN 1-5647

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In the Supreme Court of the United States

OCTOBER TERM, 1961.

No.

WILLIAM PRESSER,
Petitioner,
vs.
UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI
To the United States Court of Appeals For the Sixth Circuit.

Now comes William Presser, petitioner, by and through his attorneys, and respectfully prays the Court that a Writ of Certiorari shall be issued to review the judgment of the United States Court of Appeals for the Sixth Circuit entered on July 6, 1961, affirming the judgment of conviction of petitioner.

OPINION BELOW.

The opinion of the Court of Appeals is set forth in the Appendix, *infra*, page 31, and is not yet officially reported.

The memorandum opinion of the District Court denying petitioner's motion for judgment of acquittal or for a new trial appears at page 326a of the Appendix below, nine extra copies of which are filed herewith. The memorandum opinion of the District Court has not been officially reported.

JURISDICTION.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1) to review the judgment of the Court of Appeals affirming the petitioner's conviction for violation of 18 U. S. C. § 1505.

On July 6, 1961, the Court of Appeals entered its judgment against petitioner. No petition for rehearing was filed on behalf of petitioner.

QUESTIONS PRESENTED.

I. Under an indictment for the violation of Title 18 U. S. C. § 1505, is the testimony of the Chairman of the Senate Select Committee on Improper Activities in the Labor or Management Field (hereinafter referred to as "Committee") admissible as evidence of (A) the question under inquiry by the Committee; (B) the pertinency or relevancy of the proper names listed on a paper and an invoice allegedly withheld or mutilated to the question under inquiry by the Committee; (C) knowledge on the part of the petitioner that the proper names allegedly listed on the paper and the invoice were pertinent or relevant to the question under inquiry by the Committee; and (D) the truth of the testimony of a Committee investigator which the Government contemplated and did subsequently introduce into evidence at the trial?

II. May an indictment and conviction for the violation of Title 18 U. S. C. § 1505 stand when the Government's evidence disclosed that the subpoena duces tecum requiring the production of documents, the violation of which subpoena is the foundation for the indictment, was not issued in accordance with the law, the rules of the Senate, the Senate resolution authorizing the establishment of the Committee, and the rules of procedure of the Committee?

III. May an indictment and conviction for the violation of Title 18 U. S. C. § 1505 stand for the alleged destruction of eight proper names on an invoice and withholding a sheet of paper with additional names when the subject under inquiry by the Committee and the pertinency or relevancy of the proper names to the Committee's investigation are not clear?

IV. Whether the Government's attorney's misstatement and misquotation of the evidence in his final argument to the jury deprived the petitioner of a fair and impartial trial?

V. Whether the evidence presented against the petitioner is sufficient to support a verdict of guilty?

STATUTES INVOLVED.

Title 28 U. S. C. § 1254(1).

§ 1254. Courts of appeals; certiorari; appeal, certified questions.

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

* * * (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree; * * * June 25, 1948, c. 646, 62 Stat. 928.

Title 18 U. S. C. § 1505.

§ 1505. Influencing or injuring witness before agencies and committees.

Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any witness in any proceeding pending before any department or agency of the

United States, or in connection with any inquiry or investigation being had by either House, or any committee of either House, or any joint committee of the Congress~~; or~~

Whoever injures any party or witness in his person or property on account of his attending or having attended such proceeding, inquiry, or investigation, or on account of his testifying or having testified to any matter pending therein; or,

Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede the due and proper administration of the law under which such proceeding is being had before such department or agency of the United States, or the due and proper exercise of the power of inquiry under which such inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress—

Shall be fined not more than $5,000 or imprisoned not more than five years, or both. June 25, 1948, c. 645, 62 Stat. 770.

Title 2 U. S. C. § 190b.

§ 190b. Authority of Senate standing committees and subcommittees; sitting while Senate or House in session.

(a) Each standing committee of the Senate, including any subcommittee of any such committee, is authorized to hold such hearings, to sit and act at such times and places during the sessions, recesses, and adjourned periods of the Senate, to require by subpena or otherwise the attendance of such witnesses and the production of such correspondence, books, papers, and documents, to take such testimony and to make such expenditures (not in excess of $10,000 for each committee during any Congress) as it deems available. Each such committee may make investigations into any matter within its jurisdiction, may report such hearings as may be had by it, and may employ stenographic assistance at a cost not exceeding 25 cents per hundred words. The expenses of the committee shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman.

(b) No standing committee of the Senate or the House, except the Committee on Rules of the House, shall sit, without special leave, while the Senate or the House, as the case may be, is in session. Aug. 2, 1946, c. 753, Title I, § 134(a), (c), 60 Stat. 831, 832.

STATEMENT OF THE CASE.

The circumstances which gave rise to the indictment of petitioner, as disclosed by the Government's case, show that Joint Council 41 is a component part of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereinafter referred to as "Joint Council 41"), and is composed of affiliated local unions within its jurisdiction in the State of Ohio. Joint Council 41 is one of three such councils in the State of Ohio, and together they compose what is known as the "Ohio Conference of Teamsters" (196a, 221a, 222a).

On March 21, 1958, Joint Council 41 was served with a subpoena duces tecum, dated March 19, 1957 [sic 1958] (Government's Exhibit 9, 313a). This subpoena was served upon William Presser, the petitioner herein (85a, 89a), by Walter J. Sheridan, an investigator for the Senate Select Committee on Improper Activities in the Labor or Management Field (hereinafter referred to as "Committee") (56a).

The subpoena purported to require Joint Council 41 to produce forthwith before the Committee all of its records for the nine year period from January 1, 1949, to

January 1, 1958, including cash receipts, disbursement books, ledgers, cancelled checks, check stubs, day books, paid bills, records of loans, correspondence files, memoranda, pay roll records, minutes of meetings, records of all bank accounts, opened and closed, and any other records relating to Joint Council 41 (Government's Exhibit 9, 313a).

Following the service of the subpoena upon Joint Council 41, an arrangement was effected between Committee personnel in the Field Office at Cleveland, Ohio, and Mr. Cozza and Miss Steuer, accountants and attorneys for Joint Council 41, whereby the documents demanded by the subpoena were delivered to the Committee personnel in Cleveland (24a, 25a, 60a, 63a, 86a, 87a, 147a). When these documents were delivered to the Cleveland Field Office, Mr. Reibesell, a government accounting office employee on loan to the Committee and stationed at Cleveland, gave Mr. Cozza a receipt for the delivered documents and addressed any questions concerning those documents to Mr. Cozza (86a; 147a; Defendant's Exhibit B, 319a). This practice continued from shortly after the service of the subpoena upon Mr. Presser to August, 1958 (86a).

Mr. Sheridan knew of the practice established by the Field Office with Mr. Cozza and he also knew that the Field Office customarily receipted for the documents it received from Joint Council 41 (96a).

In late August of 1958, Walter J. Sheridan was informed by the Committee counsel that the Teamsters Union had established an "Anti-Corruption Commission" (61a). In view of the fact that ex-Senator Bender had been appointed to this commission, Mr. Sheridan was sent to Ohio by the Committee counsel to attempt to establish whether there had been an association between ex-Senator Bender and the Teamsters Union (62a). In pursuance of these instructions (62a), Walter Sheridan went to the office of Joint Council 41 on September 9, 1958.

On this date Mr. Sheridan talked to the petitioner and told him that he wanted to look through certain files (63a). Mr. Presser referred Mr. Sheridan to his secretary, and the files of several filing cabinets were made available to Mr. Sheridan (66a). Of the many files that Mr. Sheridan examined, he noticed in one of these files an envelope marked "Xmas List," and the envelope contained a voucher from the Rudolph Deutsch Company and a sheet of yellow paper with a list of names thereon (68a). Eight names appeared on the face of the voucher and these same names also appeared on the sheet of yellow paper along with some other names (68a). From all of the files examined by Mr. Sheridan, he made notes concerning only the voucher and the sheet of yellow paper (68a, 69a; Government's Exhibit 13, 317a). Mr. Sheridan's notes contained all of the details that were on the invoice and indicated that in addition to the names listed on the invoice other names were listed on the yellow sheet of paper (69a).

The cancelled check and check stub of Joint Council 41 showing payment of the Rudolph Deutsch invoice had been delivered to the Committee's Field Office prior to Sheridan's visit to the office of Joint Council 41 (59a, 94a, 137a, 138a, 146a; Defendant's Exhibit B, 319a; Defendant's Exhibit D, 323a).

When Mr. Sheridan was ready to depart the office of Joint Council 41 he stated to Mr. Presser that he would like to take four of the several files from the filing cabinet, one of which contained the invoice from the Rudolph Deutsch Company and the sheet of yellow paper (70a).

Mr. Sheridan testified that Mr. Presser did not want to allow the files to be taken from the office at that time because he wanted to have photostats made of them. To this Mr. Sheridan agreed, and when he returned on September 13, 1958, to get the files they had not been photostated. Mr. Sheridan again examined the files and discovered that although the voucher was in the files the eight names that appeared thereon were torn off (Government's Exhibit 12, 316a) and the sheet of paper with the names thereon was missing (71a, 72a).

Mr. Presser testified upon this same matter that he was agreeable to permitting Mr. Sheridan to retain those files which Mr. Sheridan indicated he wanted. However, Mr. Presser felt that Mr. Sheridan should give a receipt for what he was taking from the office of Joint Council 41 (227a) in conformity with the practice established between Mr. Cozza and the Field Office (147a). Because of the late hour, Mr. Sheridan stated that he would be unable to give a receipt for all of the matters that he was taking, but either Mr. Sheridan or Mr. Presser suggested photostating the contents of the files, to which there was apparent agreement. When Mr. Sheridan returned on September 13, he found the files were not photostated and he again examined the contents. In a show of temper, Mr. Sheridan accused the petitioner or some teamster, of destroying a piece of paper, and in the same show of temper departed with the files without first giving any receipt to the defendant therefor (231a, 232a).

On March 23, 1960, the petitioner was indicted and charged with the violation of the provisions of Title 18 U. S. C. § 1505 (5a), to which indictment the petitioner entered his plea of not guilty on April 1, 1960 (1a). On May 31, 1960, the case was called for trial before Judge Paul Jones and a jury in the United States District Court for the Northern District of Ohio, at Cleveland.

During the course of the trial the petitioner took the stand in his own behalf and stated that he had no recollection of ever having seen the documents which are the subject of this suit prior to September 13, 1958, and denied that he withheld, erased or mutilated the documents which were the subject of this trial (232a). The petitioner had never been convicted of a crime (271a).

Emphasis has been supplied throughout this Petition by bold face type.

REASONS FOR GRANTING WRIT.

I. The testimony of the Committee Chairman was inadmissible against the petitioner and the admission of his testimony into evidence deprived petitioner of his right to a fair and impartial trial.

II. The petitioner could not have obstructed or impeded the due and proper exercise of the Committee's power of inquiry because the subpoena duces tecum, the alleged violation of which is the basis of petitioner's conviction, was not issued by the Committee.

III. The petitioner could not have obstructed or impeded the due and proper exercise of the Committee's power of inquiry because the Committee obtained the information it is claimed it sought without obstruction or impediment.

IV. The petitioner was deprived of his right to a fair and impartial trial by the misconduct of the Government's counsel in his final argument to the jury.

V. The evidence presented against the petitioner cannot sustain a conviction for the violation of 18 U. S. C. § 1505.

I.

The testimony of Senator McClellan was offered by the Government and was sought to be justified on the ground that such testimony was (334a-335a):

A. Evidence that the question under inquiry by the Committee was the due and proper exercise of the power of inquiry under which the Committee was conducting its investigation.

B. Evidence that the **proper names** allegedly listed on the sheet of paper and the Deutsch invoice were pertinent or relevant to the question under inquiry by the Committee.

C. Evidence that the petitioner had knowledge that the sheet of paper and the Deutsch invoice bore a reasonable relation to the subject matter of the Committee's inquiry and were relevant to it.

D. Evidence to corroborate the testimony of Walter J. Sheridan, whom the Government anticipated producing later in the trial.

The testimony of Senator McClellan cannot be justified for any purpose in the trial of this case. The real and substantial reason for producing McClellan was to attempt to construct a basis for the indictment of the petitioner, which did not exist in fact at the time of the indictment, and to vouch for the truth of the evidence the Government was to produce subsequently during the course of the trial.

A.

The petitioner conceives the law to be that in these matters wherein federal courts are called upon to adjust the interests of the Government with the rights and privileges of its citizens, the question of relevancy and pertinency is **twofold.**

First, the relevancy or pertinency of the subject under inquiry by the Committee must not exceed the scope of authority under which the particular investigation is being held. *Barenblatt v. United States,* 360 U. S. 109 (1959) and *Watkins v. United States,* 354 U. S. 178 (1957).

Second, the particular questions asked or the particular documents demanded must be relevant or pertinent to the subject under inquiry by the Committee. *Barenblatt v. United States, supra*, and *Watkins v. United States, supra.*

In *Watkins v. United States, supra*, at pages 206 and 214 the court unmistakably differentiated between the concept of relevancy or pertinency in the two instances above referred to.

The question of the relevancy or pertinency of the subject under inquiry by the Committee to the scope of authority under which the particular investigation is being held (referred to as jurisdictional pertinency in *Watkins v. United States, supra*) must be determined by the trial court as a matter of law, and the submission of this question, together with evidence thereof, to the jury is prejudicial error. Whether the subject under inquiry is within the scope of authority of the Committee (jurisdictional pertinency) must be determined by the court from the resolution establishing the Committee. If relevancy or pertinency cannot be established in this manner, the Government has failed to establish a vital element of the offense charged against the petitioner. *United States v. Rumely*, 345 U. S. 42 at 44 and 45 (1953).

The trial court at no point during the trial in the instant case made any determination that the subject under inquiry by the Committee was relevant or pertinent to the scope of authority of the Committee's investigating power. The trial court, on the other hand, admitted the testimony of Senator McClellan as evidence of such relevancy or pertinency and submitted the issue of jurisdictional pertinency to the jury for its determination as a matter of fact.

The testimony of Senator McClellan was wholly inadmissible to determine this issue and the court, in permitting the Senator to testify in any manner upon this subject, not only confused the issue in the minds of the jury, but deprived the petitioner of his right to have the "material and essential elements" necessary to constitute the offense determined as a matter of law.

B.

To support the charges made against the petitioner, it was incumbent upon the Government to prove that the **proper names** on the documents demanded, which documents were allegedly withheld or mutilated, were relevant or pertinent to the subject under inquiry by the Committee.

Again, the determination as to whether the **proper names** allegedly listed upon the documents demanded were relevant or pertinent to the subject under inquiry by the Committee must be determined by the trial court as a matter of law. *Barenblatt v. United States, supra; Watkins v. United States, supra; United States v. Rumely, supra* and *Sinclair v. United States,* 297 U. S. 263 (1929).

The trial court failed in any manner to make a determination as to whether the names listed upon the documents demanded were relevant or pertinent to the subject under inquiry by the Committee and permitted Senator McClellan, over the repeated objections of petitioner, to state that in his opinion the proper names on the demanded documents were relevant or pertinent to the Committee's inquiry. Upon this testimony from the Senator the trial court submitted the issue of the pertinency or relevancy of the proper names on the demanded documents to the subject under inquiry by the Committee to the jury for its determination as a matter of fact.

The Senator testified that if the sheet of paper and the Deutsch invoice in fact did contain proper names and those names were removed or withheld from the Committee, that fact alone would obstruct the investigation of the Committee because those names were pertinent to the Committee's inquiry (45a, 46a).

The petitioner contends that the question of "relevancy or pertinency" of the names on the demanded documents to the subject under inquiry by the Committee should have been determined by the court as a matter of law; and that, in failing to make this legal determination, the court abdicated its function in this respect in favor of Senator McClellan. However, the prejudicial effect of the court's error was compounded when, after determining that relevancy or pertinency was a matter of fact, the court permitted the Senator to usurp the function of the jury and testify as to the ultimate and conclusive fact which, in the trial court's view of the case, should have been submitted to the jury.

Not only was the introduction of any testimony by Senator McClellan incompetent to establish that the names on the demanded documents were relevant or pertinent into the subject under inquiry by the Committee, but the substance of the Senator's testimony was highly prejudicial to the petitioner for another reason. (45a, 46a.)

Going far beyond what could possibly be viewed as evidence of the relevancy or pertinency of the names allegedly listed on the demanded documents, the Senator was permitted to comment upon and read "special findings and legislative recommendations of the Committee" (26a), which were set forth in the Committee's Interim Report and introduced into evidence against the petitioner (Government's Exhibit 7, 27a).

After testifying to the legislative recommendations of the Committee, as set forth in the Interim Report, the Senator was permitted to read from and comment upon the Committee's "findings" with respect to "racketeers," "unsavory characters" and "criminals," some of whose names appeared on the Deutsch invoice (41a, 42a, 43a, 44a, 45a).

The trial court's duty in these matters is too well settled to warrant any doubt that the admission of the testimony of Senator McClellan was erroneous and prejudicial to the rights of the petitioner.

In *Sinclair v. United States*, 279 U. S. 263 (1929), the Court discussed pertinency and relevancy generally at page 299.

In keeping with the pronouncements of Mr. Justice Butler in *Sinclair v. United States*, Judge Edgerton stated in *Keeney v. United States*, 218 F. 2d 843 (D. C. Cir. 1954), at page 845, the principle petitioner believes is controlling in the instant case:

> **"Since pertinency did not concern the jury, the court erred in permitting the jury to hear testimony about the appellant's activities which bore only on pertinency and tended strongly to prejudice the jury."**

Concurring, Judge Danaher stated at page 846:

> **"I agree that the conviction should be reversed and a new trial be ordered. The error requiring this result stems from the failure to exclude the jury while highly prejudicial evidence was received to establish the element of pertinency."**

Concurring, Judge Prettyman stated at page 849:

> **"* * * Since the Supreme Court holds the issue is not for the jury, I agree that evidence which is not relevant to the issues before the jury and which is highly prejudicial to the accused on those issues, ought not be heard by the jury."**

United States v. Orman, 207 F. 2d 148 (3rd Cir. 1953) adheres to the same principle.

C.

One of the purposes for which the Government desired, and for which the court permitted, the introduction of the testimony of Senator McClellan was to prove **knowledge** on the part of the petitioner. Senator McClellan's testimony in this regard was to prove to the jury that the petitioner had **knowledge** of the question under inquiry by the Committee and that the petitioner had **knowledge** of the relevancy of the **names** on the Deutsch invoice and the paper to the question then under inquiry by the Committee.

That such was a purpose of the evidence from Senator McClellan is amply disclosed by the argument advanced by the Government to the jury (339a) and by the charge of the court (303a, 304a).

The Government was permitted to cross examine the petitioner at length concerning his knowledge of the findings contained in the Committee's Interim Report. The petitioner testified that he did not know of the Interim Report, had not read it and that it was only through the Government's case that he had "heard" that one of the persons listed in the Deutsch invoice was a "known consorter with criminals" (255a, 256a).

The petitioner testified also that any findings that the Committee had made concerning the Teamsters he read in the newspapers (255a).

The knowledge chargeable to the petitioner as set forth in the indictment is the knowledge attributable to him through the subpoena (Government's Exhibit 9, 314a) served on March 21, 1958 (Indictment, 5a). The knowledge properly chargeable to the petitioner must stem from the Committee's due and proper exercise of its power of inquiry as it relates to the petitioner or Joint Council 41 for which he may be responsible.

In this regard it should be noted that the hearings which composed the Committee's Interim Report were heard, concluded and compiled prior to the date that Sheridan served his subpoena for Joint Council 41 records upon the petitioner. The Interim Report, as the Committee's final document, was filed with the Senate on March 24, 1958 (28a).

Rather than being evidence of the petitioner's **knowledge** of the question under inquiry by the Committee, the continued reference to and reading from the Committee's Interim Report during the trial and in final argument was a calculated effort to affect the jury in the manner which was recognized and condemned by the court in *Bowers v. United States*, 202 F. 2d 447 at 452 (D. C. Cir. 1953). The court in this case, considering the Interim Report of another Congressional Investigating Committee, stated:

> "But whether so or not, it seems clear that pertinency was not shown here. One may be said to know another after a mere formal introduction or through the most casual acquaintance. Had it been shown, as it was not, that Johnston was engaged in some interstate criminal activity, whether Bowers had ever met him could not have pertained to the matter under investigation. **In a sense the subcommittee seems to have accused Bowers of guilt through casual acquaintance, which is even worse than guilt by association. Moreover, we note that Bowers said to the subcommittee with reference to Johnston, 'I don't know anything about him.'"**

D.

Senator John L. McClellan was called as the Government's first witness against the petitioner. Senator McClellan identified Government's Exhibit 8 as Volume 40 of the public hearings conducted by the Committee (34a), and Volume 40 was introduced into evidence over the objections of the petitioner (36a). Following the identification and introduction into evidence of Volume 40, Senator McClellan was permitted to read the testimony of Walter Sheridan given to the Committee on September 17, 1958 (38a, 39a, 40a, 41a).

At the time of trial five reasons were advanced by the Government to justify the Chairman's reading the testimony of a committee investigator. One reason given by the Government's attorney was:

> "* * * Before we get certain matters in evidence directly I would like the Senator to be able to testify as to their pertinency. * * *" (35a.)

Mr. Sheridan, who was in the corridor at the court while Senator McClellan testified, followed the Senator to the witness stand and testified concerning the facts which were allegedly the basis for his testimony before the Committee.

In view of the circumstantial nature of the case presented to the jury by the Government against the petitioner, the petitioner respectfully submits that the principle announced in *Mellon v. United States*, 170 F. 2d 583 (5th Cir. 1948) is controlling herein.

In reversing the trial court, the appellate court in the *Mellon* case stated at page 585 of its opinion:

> **"* * * we are forced to the conclusion that the admission of this evidence was prejudicial to Mellon, as tending to bolster the testimony of the witness Edgar, and doubly emphasize his evidence before the jury**

as against that of the accused. The general rule is that a witness may not be corroborated or have his sworn testimony reinforced by proof that on previous occasions he has made the same statement as those made in his testimony."

United States v. Alu, 246 F. 2d 29 (2nd Cir. 1957); *United States v. Keller,* 143 F. Supp. 692 (D. N. J. 1956), uphold the same principle announced in *Mellon v. United States, supra.*

II.

The Government's evidence disclosed that in the indictment and conviction of the petitioner for the violation of Title 18 U. S. C. § 1505 there has been not only a failure of any insistence upon procedural regularity, there has been a complete lack of such regularity.

Senate Resolution 74 established the Committee, and it provides in part (Government's Exhibit 5-C, 312a):

> "* * * Sec. 2(a) **The select committee shall consist of 8 members * * *, and shall, * * * adopt rules of procedures not inconsistent with the rules of the Senate. * * ***
>
> "Sec. 4. **For the purposes of this resolution the select committee is authorized as it may deem necessary and appropriate to * * * (4) require by subpena or otherwise the attendance of such witnesses and production of such correspondence, books, papers, and documents; * * ***"

Title 2 U. S. C., § 190 b (a) provides in part:

> "Each standing **committee** of the Senate, including any subcommittee of any such committee, is authorized * * * to **require by subpoena or otherwise the attendance of such witnesses and the production of such correspondence, books, papers, and documents, * * *** as it **deems** advisable. * * *"

Paragraph 4 of the Rules of Procedure of the Senate Select Committee on Improper Activities in the Labor or Management Field (Government's Exhibit 6, 313a) provides:

> "Subpenas for attendance of witnesses and the production of memoranda, documents, and records **shall be issued by the Committee Chairman or by any other Member of the Committee designated by him in writing."**

Senator McClellan testified that under the resolution establishing the Committee and the rules of the Committee itself, the Chairman had the authority to issue subpoenas (21a, 22a).

The Committee Investigator Walter J. Sheridan testified (84a):

> "Q. And your recollection is that it |subpoena| was prepared here? A. No, my recollection is that the chances are it was prepared here. I can't say for certain that it was.
>
> Q. **And the chances are that if it was prepared here you filled in a subpoena signed by Senator McClellan that was blank, isn't that correct? A. That would be correct."**

The practice of an investigator or other employee of the Committee deciding for whom a blank subpoena shall be directed and for what purpose or for what documents cannot be the "due and proper exercise of the power of inquiry under which the investigation is being had" by the Committee.

If any employee of the Committee can decide to whom a subpoena shall be directed and for what purpose or what documents, the Committee is **not** serving as the representatives of Congress in collecting information for a legislative purpose and the Committee's power of inquiry is not limited by the source of its existence.

Certainly those limitations upon the use of the compulsory process in furtherance of a legislative purpose advanced in *Watkins v. United States*, 354 U. S. 178 (1957) will have been totally ignored, if not openly flouted, if the conviction of the petitioner is permitted to stand. The Court of Appeals stated in its opinion: "* * * and we agree with the District Court that there was nothing unlawful in the method used by the Committee in issuing the subpoena duces tecum. Moreover, appellant knew that the documents in question were wanted by the Committee, and, in such a case the existence of a valid subpoena is not vital to the charge of obstruction of justice. * * *"

7

The view of the Court of Appeals cannot be reconciled with the statement of Chief Justice Warren in *Watkins v. United States, supra*, at page 215 of his opinion, wherein it is stated:

> "* * * **It is only those investigations that are conducted by use of compulsory process that give rise to a need to protect the rights of individuals against illegal encroachment.** That protection can be readily achieved **through procedures which prevent the separation of power from responsibility and which provide the constitutional requisites of fairness for witnesses.** A measure of added care on the part of the House and the Senate in authorizing the use of compulsory process and by their committees in exercising that power would suffice. That is a small price to pay if it serves to uphold the principles of limited, constitutional government without constricting the power of the Congress to inform itself."

There is no precedent in the entire history of legislation controlling the use of subpoena power by congressional investigating committees, and there is no justification in the light of the rights of the petitioner to be protected in this lawsuit, to warrant an inference that the Committee had a right to delegate indiscriminately its subpoena power to an investigator or employee of the Committee.

The problems attendant upon the Committee's delegation of subpoena power to its employees were extensively considered by Mr. Justice Stone in *Cudahy Packing Co. v. Holland*, 315 U. S. 357 at 363 (1942):

> "Unlimited authority of an administrative officer to delegate the exercise of the subpoena power is not lightly to be inferred. **It is a power capable of oppressive use, especially when it may be indiscriminately delegated and the subpoena is not returnable before a judicial officer. * * * All these are cogent reasons for inferring an intention of Congress not to give unrestricted authority to delegate the subpoena power which it has in terms granted only to the responsible head of the agency."**

Those inferior federal courts which have dealt with this question have had no difficulty in requiring Committees to exercise this subpoena power in compliance with the authority of their organization.

In *Ex parte Frankfeld*, 32 F. Supp. 915 at 916 (D. C., 1940), the matter was considered by Judge Letts as follows:

> "In this case the warrant had for its basis the affidavit of one Robert E. Stripling, who is described as the secretary of the Committee on un-American Activities. It seems obvious that Congress intended no such action to be taken by an individual. Stripling was not a member of the committee; he was an employee of the committee. It seems plain to me that he has no power to institute proceedings of this kind. I am likewise of definite opinion that a member of the committee would have no such right. Certainly a bystander could not institute proceedings of this kind. **Congress intended to place the responsibility upon the committee itself, and it has prescribed what proceed-**

> **ings may be had when the committee has reported to the Congress**—The House or the Senate, as the case may be—the fact of a witness' refusal to answer."

In *Application of Barnes*, 116 F. Supp. 464 at 467 (N. D. N. Y., 1953), the District Court disposed of the matter as follows:

> "There is no judicial authority to my knowledge directly in point and the analysis of the intent of the Congress is made difficult by the immensity of the Act itself. The importance to the administration and enforcement of the Act is evident because it would ease the burden of investigations in such situations as here, **but such reason of expediency cannot prevail if the subpoena power exercised is in excess of the statutory grant.** The authority of Congress to delegate the subpoena power to administrative agencies is clearly established, even to the extent that it may delegate effective power to investigate violations of its own laws. However, the **subpoena power must remain within the bounds of the legislative grant, not overreach the authority granted by Congress, and in investigatory matters should be conferred in express and explicit terms for that purpose.** In my own judgment, subpoenas should not issue upon hit or miss legal grounds."

In *United States v. Olson*, 134 F. Supp. 481 at 482 (E. D. N. Y., 1955), the court stated:

> "**That which took place on August 23, 1951 was not a hearing before the Congressional Committee, no member of which was present, but consisted of inquiries made by investigators** in pursuit of their authorized calling. As pointed out in United States v. Brennan, 94 U. S. App. D. C. 184, 214 F. 2d 268, at page 271, certiorari denied 348 U. S. 830, 75 S. Ct. 53, the witness Olson could not have been dealt with as in contempt of the Committee, had he refused to answer the questions propounded by the investigators."

III.

That the proper names stated by Sheridan to have been listed on the sheet of paper allegedly withheld or the eight names on the Deutsch invoice allegedly mutilated were not pertinent or relevant to any question under inquiry by the Committee at the time they were allegedly mutilated and withheld was amply disclosed, albeit objectionable, by the testimony of Senator McClellan and that of Investigator Walter Sheridan.

The Government attempted to elicit from Senator McClellan the reason or purpose of Investigator Sheridan's visit to Ohio. The Senator testified that some investigation had been underway in Ohio and after George Bender had been appointed to a Teamster cleanup committee Sheridan "pursued some investigation of the situation by reason of the appointment of this committee" (32a, 33a, 34a).

Walter J. Sheridan testified that the Committee counsel in late August of 1958 had instructed him to go into Ohio and attempt to establish whether there was an association between George Bender and the Teamsters and the degree of that association. Sheridan came to Ohio in late August of 1958 and pursued those instructions (60a, 61a, 62a).

The development of the Government's case against the petitioner clearly indicated that Walter Sheridan did not come to Ohio to investigate Joint Council 41, but to determine George Bender's relationship with teamsters in Ohio. It is also clearly indicated that Walter Sheridan was sent by the Committee counsel to get **information**, and both he and Senator McClellan testified to this fact (45a, 101a). The testimony of both McClellan and Sheridan also disclosed that Sheridan did get the information for which he came to Ohio and that **information** was obtained by Sheridan on September 9, 1958.

Government's Exhibit 10 (315a) are the notes that Walter Sheridan made concerning his visit to the office of Joint Council 41 on September 9, 1958. Of the many files that were available to Mr. Sheridan, these were the only notes he made of any document or file (69a). The reason Mr. Sheridan gave for making those notes was that he was investigating George Bender (99a).

There are two factors which amplify the fact that Walter Sheridan, as an investigator, was interested in any information he might obtain concerning George Bender, rather than the fact that the documents purportedly required to be produced were the subject under inquiry by the Committee and that the proper names on those documents were pertinent or relevant to that inquiry.

First, the evidence produced by the Government over petitioner's objection of the retention of George Bender by the Ohio Conference of Teamsters in 1958 clearly verifies Sheridan's interest in George Bender. Second, the testimony of Sheridan as to his knowledge of the establishment of the field office in Cleveland for the local production of documents purportedly required to be produced by the subpoena (25a, 59a, 86a) indicates clearly that Sheridan was not aware what, if any, documents had not been produced by Joint Council 41.

The most conclusive proof that the proper names listed on the documents allegedly mutilated and withheld was the testimony of Senator McClellan.

During the course of the trial the Government's attorney questioned Senator McClellan about the specific "findings" of the Committee with respect to certain officers of the Teamsters Union whose names appeared upon the Deutsch invoice. After objection by the petitioner the trial court questioned Senator McClellan concerning the Committee's interest in one officer of the union sending another officer of the union a Christmas gift. Senator McClellan stated to the court that it was not a question of one officer sending another officer a Christmas gift, but was a question of using union dues for such purposes (43a).

The Court of Appeals in the 4th paragraph of its opinion, Appendix, *infra*, pages 32-33, evaluates Senator McClellan's testimony in this regard as follows:

> "As Senator McClellan testified, the question was not whether an officer of the Union sent a champagne bucket to another officer, but 'it is a question of using Union dues money for such purpose'—and the use of Union dues money was one of the questions the Committee was investigating. * * * We accept this evidence as true on this appeal from a verdict and judgment in favor of the government."

If the testimony of Senator McClellan referred to above and quoted by the Court of Appeals is the true evidence on the petitioner's appeal, it should be abundantly clear that the petitioner did not and could not have obstructed or impeded the investigation of the question under inquiry by the Committee. Sheridan at all times had the Deutsch invoice which contained the information which Senator McClellan stated interested the Committee (72a; Government's Exhibit 12, 316a).

Sheridan had made notes of the proper names claimed to have been on the Deutsch invoice which Senator McClellan testified was not of interest to the Committee (43a).

The testimony of Sheridan and McClellan and the opinion of the Court of Appeals clearly indicate that the petitioner did not obstruct or impede the Committee in the due and proper exercise of its power of inquiry.

It is not discernible from the Government's evidence what subject the Committee had under inquiry on September 9, 1958, and under any view of the Government's evidence it cannot be said that the Appellant obstructed or impeded any due and proper exercise of investigative power by the **Committee.** To obstruct or to impede is to hinder or prevent progress toward a goal or an achievement. Sheridan had fulfilled the purpose for which the Committee counsel instructed him to travel to Ohio late August of 1958, and no act of the Appellant, or any other person, could have, at the time that Sheridan made the notes contained in Government's Exhibit 10, impeded or obstructed the achievement of Mr. Sheridan's goal.

The record of the events of the Committee with respect to the independent actions of Walter J. Sheridan fully disclose those factors that the Supreme Court found barren in the record of *Barenblatt v. United States,* 360 U. S. 109 at 134 (1959).

IV.

As the trial progressed, what had been characterized by the Government's attorney as a simple case became rather complex by the various attempts to justify the admission of evidence which, as the petitioner had contended, was erroneously admitted and prejudicial to the petitioner. During the Government's attorney's final argument repeated references were made to "criminals," "racketeers," "unsavory characters" and "persons of bad reputation."

With the repeated references to "criminals," "racketeers," "unsavory characters" and "persons of bad reputation" throughout the trial as a background, the misstatements of the evidence by the Government's trial attorney in his final argument had a telling effect upon the jury, the trial court and the Court of Appeals.

The Court of Appeals, in its opinion, Appendix, *infra*, page 34, has singled out the trial court's observation concerning the impact of the Government's proof of telephone calls from Hoffa in Washington to Presser in Cleveland, and the further proof of the petitioner seeking information "as to whether he could secure the duplicate invoices in question at a time when the original invoice had just been mutilated."

Regarding the telephone calls: The petitioner did not at any time attempt to establish a defensive alibi. The petitioner took the stand and candidly and honestly recounted the circumstances of Sheridan's visit to his office in September of 1958. He emphatically denied having consciously seen the documents in question at any time from 1955 until the time of trial, and denied that he mutilated either document or withheld them from Sheridan or the Committee (232a).

If the documents were subject to demand by Sheridan through the subpoena referred to in the indictment, Sheridan had those documents in his possession on September 9, 1958.

Regarding the duplicate invoices: Charles S. Schaeffer testified:

> "**I called and asked** for information as to **whether he** (Mr. Feder, Deutsch Company) **had any bills or invoices** which were sold to the Teamsters Union or to Mr. Presser **and, if so, I would like to have duplicate copies of them.**"

The Government argued to the jury that Mr. Schaeffer was perhaps the Government's most important witness because it disclosed that "Presser asked Schaeffer to attempt to get him the other copies pertaining to this gift" (341a, 342a). When petitioner's counsel called the misconduct of the Government's trial attorney to the attention of the trial court concerning this "most important witness of the Government," the trial court was so impressed with the Government's argument that he stated (327a):

> **"My impression of the cogent evidence which very likely influenced the jury was the defendant's testimony * * * To a like effect is the clear implication in Salesman-Charles Schaeffer's testimony that the defendant, in September, 1958, was interested in securing the duplicate copy of the torn invoice. (Defendant's brief does not set out fully Schaeffer's testimony about trying to secure the duplicate invoice for Presser, see pages 381 and 382 of the typewritten transcript.)"**

If the trial court and the Court of Appeals were so impressed with the misstatements of the evidence by the Government's attorney in his final argument, certainly the influence the misstatements had upon the jury were equally as great as the trial court and the Court of Appeals have observed.

V.

To prove the charges made against the petitioner the Government relied upon circumstantial evidence (302a, 303a), and that evidence cannot support the conviction of guilty.

Following the service of the subpoena duces tecum demanding nine years of records of Joint Council 41 (Government's Exhibit 9, which the petitioner contends was a nullity), the demanded documents were turned over to an employee of the Committee at the Cleveland Field Office (86a). When these documents were turned over to the Committee's Field Office Paul T. Riebesell receipted for the documents (146a, 147a). However, several Government agencies or departments demanded the same documents over the same period of time (146a). Both Senator

McCllellan (25a) and Walter Sheridan (86a) knew of this practice.

At the time Sheridan went to the office of Joint Council 41 on September 9, 1958 and on September 13, 1958, there was in the custody of the Committee's field office personnel the cash disbursement book of Joint Council 41 for 1955 (Government's Exhibit 23, 137a) and the cancelled checks with stubs of Joint Council 41 for November and December of 1955 (Government's Exhibit 24, 137a).

Line 7 of Government's Exhibit 23 under date of December 29, 1955, was the entry "A. R. Deutsch, $824." (175a) and a reference to check "82-8302" (175a).

Government's Exhibit 24 contained Check No. 8302 and the stub to that check had the notation "Rudolph Deutsch for $824 for Christmas gifts" (176a).

Despite the fact that Sheridan knew of the arrangement in existence between Joint Council 41 and Field Office (86a); knew that the Field Office gave receipts for documents it received (96a); and knew many receipts for Joint Council 41 were in the Field Office files (96a); Sheridan did not examine any of the documents in the Field Office. Particularly, Sheridan knew nothing about Government's Exhibits 23 and 24 "on or about and between September 9, 1958 and September 13, 1958" (94a).

Although Sheridan made notes (Government's Exhibit 10) of "all of the details" that appeared on the original of the Deutsch invoice (Government's Exhibit 9, 69a), he could not recall the appearance of "this second piece of paper" (68a).

Petitioner's secretary was called as a witness by the Government and testified that the petitioner was out of town following Sheridan's visit to the office of Joint Council 41 on September 9, and the date of the petitioner's absence was the "10th or 11th" (181a). Petitioner's secretary also testified that in petitioner's absence from his office a great number of people had access to it for their business (165a).

If the petitioner is presumed innocent of the charges in the indictment and if the presumption remains with the petitioner until that presumption of innocence is overcome by **substantial** and **affirmative** evidence, the Government failed to exclude every other hypothesis except that of the guilt of the petitioner.

CONCLUSION.

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be granted.

Edwin Knachel,
Counsel for Petitioner.

APPENDIX.

OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

(Decided July 6, 1961.)

Before SIMONS, Senior Circuit Judge, McALLISTER and CECIL, Circuit Judges.

McALLISTER, Circuit Judge. From a conviction on a charge of obstructing justice, in violation of a federal criminal statute, through mutilation and concealment of records sought by a congressional investigating committee, William Presser appeals. He claims the District Court committed error in admitting the testimony of Senator John L. McClellan as evidence of the question under inquiry by the Committee; the pertinency and relevancy of names on a paper and invoice allegedly withheld or mutilated; knowledge on Presser's part that such names were pertinent or relevant to the question under inquiry by the Committee; and the testimony of an investigator for the Committee. Appellant also contends that the subpoena duces tecum issued for the production of documents, the violation of which subpoena is the foundation for the indictment, was not issued in accordance with the law, the rules of the Senate, the rules of procedure of the Committee, and the Senate resolution authorizing the establishment of the Committee.

During the period in question, Presser was President of Joint Council No. 41 of the International Brotherhood of Teamsters. At that time, the Senate Select Committee on Improper Activities in the Labor or Management Field, was conducting an investigation, including the affairs of certain officers connected with the Teamsters Union. In carrying out its investigation, the Committee dispatched an investigator, Walter J. Sheridan, to Ohio, to examine the books and records of certain organizations, including those affecting the relations between former Senator Bender and various officials of the Teamsters Union. Mr. Bender had previously been appointed by the provisional president, James R. Hoffa, as chairman of a committee to investigate the Union and the practices carried on by it.

Mr. Sheridan, the investigator for the Senate Committee came to Cleveland and served the subpoena upon Presser on March 21, 1958. Arrangements were made by the Committee and the Union whereby the subpoenaed records would be turned over to the office of the Committee in Cleveland rather than be taken to Washington. Sometime later, Sheridan, according to his testimony, returned to appellant's office on September 9, 1958, and asked for correspondence files that had not been previously given over in compliance with the subpoena; and, in going through the files, Sheridan found the envelope and invoice containing the list of names in question. The invoice showed a sale of eight champagne buckets at $100.00 each and contained eight names to whom the buckets were to be delivered, one of which was the name of former Senator Bender. It appeared that the buckets were to be Christmas gifts from the Union to the eight named persons.

As Senator McClellan testified, the question was not whether an officer of the Union sent a champagne bucket to another officer, but "it is a question of using Union dues money for such purposes"—and the use of Union dues money was one of the questions the Committee was investigating. Sheridan, after examining the documents, left them, including the invoice, in Presser's possession in order to permit the latter to photostat them; and, when, four days later, Sheridan returned, the envelope which bore the notation "Christmas list," and a sheet of paper which listed the names above mentioned were missing; and the invoice itself had been torn in such a manner as to remove the eight names listed on it. When Sheridan realized that the envelope and sheet of paper containing the names had been removed from the files, and the invoice torn in such a way that the names were missing, he stated that he turned to Presser and said: "I should have known better than to trust you," and that Presser replied: "You have your job to do, I have mine." We accept this evidence as true on this appeal from a verdict and judgment in favor of the government.

However, with great awareness of the situation, Sheridan immediately sought out the original seller of the champagne buckets and was able to secure from him the duplicate copy of the invoice, which contained the eight names that had been torn off the original invoice.

On the trial, Presser maintained that he could not have done anything to the invoice because he went to Washington, D. C. the same day that Sheridan called at his office, and remained there until September 12, just before Sheridan returned to his office. Presser testified that during the time he was in Washington, he visited James R. Hoffa, and stayed in the suite of rooms maintained by the International Union of Teamsters, which is also used by Hoffa.

The government, however, proved that during the period Presser claimed he was staying in Washington and seeing Hoffa, Hoffa had been engaged in making two person-to-person calls to Presser, one to his home, and one to his office, both in Cleveland, one conversation lasting three minutes, and the other conversation lasting eighteen minutes. Moreover, in controverting Presser's claim that he had nothing to do with the removal of the "Christmas list" envelope, the paper containing the names of the persons to whom the Union was making gifts of champagne buckets, and the tearing from the invoice the names of the persons to whom the champagne buckets were to be delivered, the government proved that, at this critical period, Presser was calling, by telephone, the salesman who had sold the champagne buckets three years before in an effort to secure the duplicate copy of the invoice that had been torn, which, it afterward appeared, the salesman was unable to get from the seller.

Here was the turning point of the case—the government's proof of the telephone calls from Hoffa in Washington to Presser in Cleveland, at the very time when Presser testified he was in Washington seeing Hoffa, and the further proof of the government of appellant's seeking information as to whether he could secure the duplicate invoice in question at a time when the original invoice had just been mutilated.

As Judge Paul Jones, the dean of federal judges, and the most experienced trial judge in the circuit, pointed out so fluently in his order denying a new trial: "Except for these circumstances, the jury may well have entertained a reasonable doubt as to defendant's guilt. But, no one that witnessed the event could have failed to sense the climatic effect of this evidence on the jury. It seemed to me that this evidence more than anything else influenced the jury's verdict."

We concur with Judge Jones in his opinion denying motion for judgment of acquittal or for a new trial, in the conclusion that the testimony of Senator McClellan was properly admissible in evidence; the trial court was correct in overruling objections based on various grounds to the testimony of Senator McClellan; and we agree with the District Court that there was nothing unlawful in the method used by the Committee in issuing the subpoena duces tecum. Moreover, appellant knew that the documents in question were wanted by the Committee, and, in such a case the existence of a valid subpoena is not vital to the charge of obstruction of justice. A review of the record does not disclose that appellant was in any way deprived of a fair trial by reason of misstatement and misquotation of evidence by counsel for the government. The evidence presented was amply sufficient to sustain a verdict of guilty. Other claimed errors are not meritorious.

In accordance with the foregoing, the judgment of the District Court is affirmed.

JUDGMENT.

(July 6, 1961)

APPEAL from the United States District Court for the Northern District of Ohio.

THIS CAUSE came on to be heard on the transcript of the record from the United States District Court for the Northern District of Ohio, and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

Approved for entry:

/s/ THOMAS F. MCALLISTER,
United States Circuit Judge.

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In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 278

WILLIAM PRESSER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. 31-35) is not yet reported. The opinion of the district court overruling a motion for judgment of acquittal or a new trial appears at page 326 of the petitioner's appendix.

JURISDICTION

The judgment of the court of appeals (Pet. 35) was entered on July 6, 1961. The petition for a writ of certiorari was filed on August 1, 1961. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether, in a trial on a charge of obstruction of justice by mutilating and concealing records sought by a congressional investigating committee, it sufficiently appeared that the records were sought for a legitimate purpose, and, if so, whether the failure of petitioner successfully to frustrate the inquiry bars the prosecution.

2. Whether admission of the testimony of the chairman of the committee as to the subjects u[illegible]r inquiry and the information sought was reversible error.

3. Whether the subpoena for the records was validly issued, and, if not, whether the charge of obstruction of justice can nevertheless be maintained.

4. Whether the summation of the prosecutor was fair.

5. Whether the evidence was sufficient to support the conviction.

STATUTE INVOLVED

18 U.S.C. 1505 provides in pertinent part:

> Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any witness in any proceeding pending before any department or agency of the United States, or in connection with any inquiry or investigation being had by either House, or any committee of either House, or any joint committee of the Congress; or
>
> * * * * * *
>
> Whoever corruptly, or by threats or force, or by any threatening letter or communication

> influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede the due and proper administration of the law under which such proceeding is being had before such department or agency of the United States, or the due and proper exercise of the power of inquiry under which such inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress—
>
> Shall be fined not more than $5,000 or imprisoned not more than five years, or both.

STATEMENT

Petitioner was indicted in the United States District Court for the Northern District of Ohio on a one-count indictment charging that he obstructed and endeavored to obstruct the due and proper exercise of the power of inquiry under which the Senate Select Committee on Improper Activities in the Labor or Management Field was conducting an investigation of the extent of criminal or other improper activities in those areas. It was alleged that between September 9 and September 13, 1958, petitioner had mutilated a certain invoice, and that he concealed and withheld from the committee an envelope bearing the notation "Christmas List" and a memorandum containing a list of names with various items of merchandise or amounts of money written next to them, all from the files of Joint Council No. 41 of the International Brotherhood of Teamsters, of which petitioner was president, when he knew that the committee was interested in these items and had subpenaed them by personal service on him (P.A.

5-7).[1] Petitioner was found guilty by a jury and was sentenced to eight months imprisonment (P.A. 330).

The evidence supporting the conviction may be summarized as follows:

On January 30, 1957, the Senate established a committee to conduct an investigation into the extent of criminal and other improper activities in the field of labor and management (P.A. 19-20, 309-313).[2] After its organization, the committee and its staff made an investigational study which covered the misuse and misappropriation of union funds improperly to influence public officials and to enrich union officials (P.A. 20-21). Among the subjects of inquiry were the affairs of certain officials and other persons connected with the Teamsters Union (P.A. 29, 44).

On March 21, 1958, and on April 1, 1958, committee subpenas, signed by Senator McClellan, directed to Joint Council 41, International Brotherhood of Teamsters, were served (P.A. 57-58, 88-89, 103-104).[3] An arrangement was entered into between the committee and the union whereby records subpenaed would be turned over to a committee office in Cleveland (P.A. 58–59).

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[1] The record on file with the Clerk consists of the appendices to the briefs filed in the court of appeals. Petitioner's appendices will be designated as "P.A." and the government's as "G.A.".

[2] Senate Resolution 74, 85th Cong., 1st Sess. (Exhibit 5-C; P.A. 312-313). The life of this committee was continued by resolution to January 31, 1959. Senate Resolution 221, 85th Cong., 2d Sess. (Exhibit 5-A; P.A. 309-310).

[3] The March subpena, exhibit 9, called upon the Joint Council to produce its "records for the period January 1, 1949 to January 1, 1958, including cash receipts and disbursement books, ledgers, cancelled checks, check stubs, day books, paid bills, record of loans, correspondence files, memoranda, payroll records, minutes of meetings, records of all bank accounts open or closed, and any other record relating to Joint Council No. 41, Inter-

On March 24, 1958, the committee filed an interim report recommending legislation (P.A. 25–27; G.A. 75–90).[4] In August 1958, the committee became interested in the relationship between the Teamsters Union and former Senator George Bender, the head of a so-called antiracketeering commission which had been established by the union to investigate corruption and improper practices of its own officials (P.A. 29–34, 45). A committee investigator, Walter Sheridan, was dispatched to Ohio to look into the books and records of certain organizations in this regard (P.A. 34, 60–62).

On September 9, 1958, at the offices of Joint Council 41, after Sheridan asked for its correspondence files which the committee had subpoenaed and not received, petitioner permitted him to go through these files which were located in a file cabinet in his secretary's

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national Brotherhood of Teamsters". (P.A. 104). Its date of issuance was listed as March 19, 1957, instead of March 19, 1958, because of a typographical error (P.A. 102, 105). The April subpena called for the production of all records from January 1, 1949 to date. It specified the same type of records as the March subpena. In lieu of the language "relating to Joint Council No. 41," it substituted "relating to Joint Council No. 41 Welfare Records, Building Association Records, Special Fund Records and the Teamsters Year Book" (P.A. 318, 89, 103).

[4] S. Rep. No. 1417, 85th Cong., 2d Sess. (1958). This report, Exhibit 7, was not permitted to go into the jury room and was not examined by the jury (P.A. 212–213).

office. Sheridan found an envelope marked "Xmas List", containing a Deutsch Company invoice showing the purchase by the Council of eight champagne masters [buckets] at $100 each, for eight individuals whose last names were listed, including the name Bender; Sheridan made notes (Exhibit 10) of the invoice (P.A. 63–64, 66, 68–69, 156–157, 315).[5] He told petitioner that he would like to take four files with him, but consented to leave them in petitioner's possession for photostating (P.A. 63, 171).

About September 11, 1958, petitioner, who had purchased the champagne buckets in 1955, contacted the salesman who had made the sale and asked if he had any records of this transaction. After telephoning the company, the salesman told petitioner that there were no such records available (P.A. 208–209, 121).[6]

On September 13, 1958, when Sheridan returned for the files, petitioner obtained them from his own office and gave them to him, saying that he had not touched them. Sheridan, noting that the invoice had been torn, and that the envelope and the other piece of paper containing the names were missing, told petitioner that he should not have trusted him. Petitioner replied, "You have your job to do, I have mine" (P.A. 71–73, 96–97). The invoice also contains alterations which had been made by an erasure (P.A. 133).

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[5] The other names were Beck, English, Hoffa, Brennan, Connell, Bliss, and Dorfman (P.A. 317).

[6] On September 13, 1958, after leaving petitioner's office, Mr. Sheridan visited the seller of the buckets. The salesman had telephoned the company one or two days prior to this visit (P.A. 75, 100, 121, 209).

At the trial, petitioner acknowledged knowing that the committee investigation could affect the Teamsters, that the committee had made reports to the Senate concerning the Teamsters, that it made some special findings with respect to the Teamsters, and that he knew of and was interested in the "cleanup commission" headed by former Senator Bender. He also said he was interested in the findings of the committee (P.A. 254–255, 262–264). His defense consisted of a denial that he had mutilated the invoice (P.A. 232). He stated that he had gone to Washington between Sheridan's two visits, leaving on September 9 and returning on the 12th, and that, while in Washington, he had seen James R. Hoffa (P.A. 229, 237–244).

On rebuttal, the government introduced telephone records which reflected that, on September 11, 1958, two long distance person-to-person phone calls had been made by James R. Hoffa, in Washington, D.C., to petitioner in Cleveland (P.A. 286–287).

The prosecution requested the judge to tell the jury that the relevancy of the information sought by the committee had been established as a matter of law (G.A. 35), but the judge deemed it a fact issue and instructed the jury accordingly (P.A. 294, 304, 326–327). When counsel for petitioner was asked for exceptions to the court's charge, he announced he had "nothing" (P.A. 307).

ARGUMENT

1. There is no validity to petitioner's contention that the mutilation of the invoice and the concealment of the memorandum with the list of eight names were not pertinent to any "question under inquiry" by the Senate Committee. While the statute (18 U.S.C. 1505, *supra*, pp. 2-3) does not specifically make pertinency an element of the offense,[7] the government agrees that the attempted obstruction "must bear a reasonable relationship to the subject of [the] inquiry" (*United States* v. *Siegel*, 152 F. Supp. 370, at 374 (S.D.N.Y.), affirmed, 263 F. 2d 530 (C.A. 2), certiorari denied, 359 U.S. 1012), and urges that that condition has been fulfilled.

(*a*) The issue of "pertinency" can, as petitioner recognizes, be at least twofold: (1) the general question of the committee's powers to inquire into a certain subject matter; and (2) the specific question whether the particular information sought is relevant to that subject matter. Both aspects of pertinency were amply met in this case. Petitioner does not and cannot deny that the committee was pursuing its proper function in examining into the general field of improper activities in labor-management relations (P.A. 212-213). As an integral part of that investigation, the committee was duly conducting an inquiry into the misuse of union funds improperly to influence public officials and to enrich union officials. See the Statement, *supra*, p. 4. Evidence of payments or gifts to such persons would obviously be relevant to that inquiry. Here, the Deutsch invoice and accompanying paper showed a gift to a United States Senator, to union officials, and to others. Clearly, the use of union funds, amassed from contributions of the members, to buy expensive Christmas gifts for public officials and labor leaders was a matter of legitimate interest to this committee. Congress has been legislating in the field of labor legislation for years and has evinced increasing concern that union dues not be misused. See the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519.

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[7] The issue of pertinency in a contempt-of-Congress prosecution (2 U.S.C. 192), and the issue of materiality in a perjury case (18 U.S.C. 1621) and in a false statement case (18 U.S.C. 1001), are made an element of the respective offenses by statute.

(*b*) Petitioner's contention that the statute was not violated because the information was ultimately obtained by the committee from other sources is likewise incorrect. The statute uses the word "endeavor" (*supra*, pp. 2-3) to describe *any* effort, successful or not, to accomplish the proscribed purpose. *United States* v. *Russell*, 255 U.S. 138, 143. Congress did not restrict its ban to successful obstructions. In this case, moreover, the attempt was successful to the extent that the actual records were destroyed.

2. At the trial, Senator McClellan, the committee chairman, testified to the authority of the committee and the machinery of its operation as reflected in its resolution and rules (P.A. 18-25); the general background of its investigations leading up to the matters laid in the indictment (P.A. 25-28); the specific subjects of interest to the committee with reference to petitioner and his union (P.A. 28-34); the activi-

ties of investigator Sheridan with respect to those subjects and to the machinery of the committee's operations (P.A. 34); the manner in which the committee had been obstructed by the acts of petitioner (P.A. 41–46); and the fact that legislative recommendations had sprung from the committee's work (P.A. 47).[9] Petitioner's various objections to this testimony are all without merit.

(*a*) In this Court, as in the court of appeals, petitioner argues that, since the issue of pertinency was for the court, the portion of the testimony bearing on pertinency should not have been before the jury. But at the trial petitioner did not urge that pertinency was for the court. Although the government submitted an instruction asking that the jury be told that pertinency had been proved as a matter of law, petitioner offered no request on that issue, took no exception to the charge on the issue, and did not claim that the court should take this issue from the jury (G.A. 36–37; P.A. 307). Petitioner cannot pursue one course at the trial and when it has proved unprofitable shift his position on appeal. *Johnson* v. *United States*, 318 U.S. 189, 201.

It is true that the trial court normally rules on the issue of pertinency as a matter of law. But there are occasions when the question has been put to the jury, and the submission of the issue in the present case cannot be regarded as error. Where, after an initial determination by the trial judge that the matter is pertinent, there is left a question of fact bearing on the basis for this determination, it has been held proper to present this mixed question of fact and law to the jury. *United States* v. *Orman*, 207 F. 2d 148, 156 (C.A. 3) (a contempt prosecution). The trial court may have considered that to be the situation here. In any event, submission of the issue to the jury usually favors the defendant, and, accordingly, the appellate courts have refused to reverse where timely objection to this mode of proceeding was not made. *United States* v. *Moran*, 194 F. 2d 623 (C.A. 2), certiorari denied, 343 U.S. 965.[9]

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[9] As noted *supra*, fn. 4, the committee's interim report was not permitted to go into the jury room.

Petitioner's claim, in this connection, that the trial court failed itself to rule on pertinency is without substance. The court implicitly ruled on the matter in denying the motion for judgment of acquittal. *United States* v. *Moran*, *supra*, at 626.

(*b*) Petitioner also complains of the testimony that failure to obtain the names of the recipients of the gifts shown on the invoice would hamper the committee (P.A. 45–46)—contending that this was a question of law not subject to evidence. Petitioner was not prejudiced by this testimony because the Senator was correct in his conclusion. As we have pointed out, *supra*, pp. 8–9, this information was clearly pertinent to the inquiry. In any event, petitioner did not object to the question on this ground. His only objection below was a general one (P.A. 45–46).

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[9] Petitioner's reliance in *Keeney* v. *United States*, 218 F. 2d 843 (C.A.D.C.), is misplaced. Both sides there recognized that the issue of pertinency was for the court and defense counsel specifically requested that the court hear testimony on this issue outside of the presence of the jury.

(*c*) In the same vein, petitioner contends that proof of the scope of the committee's inquiry was limited to the Congressional resolution, and that Senator McClellan's testimony on this issue was inadmissible (Pet. 10–12). The Senator testified that, pursuant to the authorizing resolutions, his committee investigated the misuse and misappropriation of union funds improperly to influence public officials and to enrich union officials (P.A. 20–21). Such evidence by committee members or counsel is admissible to show the scope of the investigation. *United States* v. *Moran*, 194 F. 2d 623, 626 (C.A. 2), certiorari denied, 343 U.S. 965.

(*d*) Petitioner also objects to the testimony identifying the persons to whom the champagne buckets had been given, and the use of the committee's interim report in this connection (P.A. 41–45). He claims he was prejudiced by the report's characterization of the recipients of the gifts. The evidence shows that six of the eight named recipients were identified. Of those identified, three were described as Teamster officials and one as a former United States Senator (P.A. 43). Only Dorfman was characterized as a person of bad repute.[10] The court sustained an objection to a question as to whether former Teamsters President Dave Beck had been prosecuted for law violations (P.A. 41–42).[11] This line of testimony was not offered to attack petitioner's character but because it was relevant to the questions of pertinency and of petitioner's motive to destroy the papers. See *United States* v. *Weber*, 197 F. 2d 237 (C.A. 2), certiorari denied, 344 U.S. 834; *infra*, pp. 16–17.

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[10] Dorfman was identified as the operator, directly or indirectly, of an insurance concern that had considerable business with the Teamsters (P.A. 43). The following was also read from the Interim Report: "Or Paul (Red) Dorfman, who reached ascendancy in the Chicago labor movement after the murder of his predecessor and who has maintained a continuous association with Chicago mobsters" (P.A. 44). In his testimony, petitioner denied knowing this information (P.A. 256).

(*c*) Finally, petitioner complains of the reading into evidence of a transcript of Walter Sheridan's testimony before the committee concerning his visits to petitioner on September 9 and September 13, 1958—on the ground that it bolstered Sheridan's testimony at the trial. (Pet. 17–18). The record shows, however, that this evidence was not introduced to corroborate Sheridan's subsequent trial testimony, and that it did not prejudice petitioner.

In the first place, this transcript (which did not go to the jury) was plainly introduced on the issue of pertinency to show that the information sought from petitioner bore a reasonable relationship to the matter under investigation (P.A. 35–36). Second, petitioner did not dispute the facts reported by Sheridan to the committee; his main defense was that during the four days between Sheridan's visits he was not in exclusive control of the documents and that he had been out of town during the major portion of that time.[12] The contradiction was not between petitioner and Sheridan, but between petitioner (who testified he was visiting James R. Hoffa in Washington between the Sheridan visits) and telephone company records, placed in evidence in rebuttal, which disclosed two person-to-person calls from Hoffa in Washington to petitioner in Cleveland during this period of time.[13] Third, petitioner did not object to the introduction into evidence of the notes that Sheridan made of the invoice and of the paper memorandum on his first visit (P.A. 69). These notes were the chief corroboration of his trial testimony, not his prior recital to the committee.

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[11] Petitioner himself admitted on cross-examination that he knew the committee had made reports which contained references to the Teamsters and specifically to Dave Beck, one of the persons named on the invoice (P.A. 255–257).

[12] This defense was made clear from the outset by counsel's opening statement (G.A. 8–11).

3. Sheridan, a committee investigator, testified that the subpena of March 19, 1958, had in all likelihood been signed in blank by Senator McClellan, the committee chairman, and had been filled in by the committee investigators (P.A. 83–84, 89). Petitioner erroneously contends that any subpena so issued is invalid, and that, therefore, he could not have obstructed justice by destroying records demanded by the subpena (Pet. 18–22).

An obstruction-of-justice prosecution does not require that the documents mutilated or concealed be under subpena. In cases involving tampering with witnesses, it has uniformly been held that an offense may be committed even though the acts of the defendant occur prior to the issuance of a subpena, or, in the case of a voluntary witness, even though no subpena is ever issued. *Broadbent* v. *United States*, 149 F. 2d 580, 582 (C.A. 10); *Odom* v. *United States*, 116 F. 2d 996, 998–999 (C.A. 5), reversed on other grounds, 313 U.S. 544; *United States* v. *Solow*, 138 F. Supp. 812, 814–815 (S.D.N.Y.). In the instant case, the documents were mutilated after Sheridan's first visit on September 9, 1958 (six months after the subpena had been served on petitioner), at which time Sheridan permitted their retention for the purpose of photostating. Petitioner's knowledge that the documents were wanted by the committee, and that his continued custody was temporary, was clearly established. That would be enough for an obstruction-of-justice prosecution, even if no subpena had been issued. Moreover, insofar as the mutilation resulted in denying the committee an opportunity to consider an objection to the subpena, this was in itself an obstruction of the committee's processes. See *United States* v. *Bryan*, 339 U.S. 323, 332.

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[13] *Mellon* v. *United States*, 170 F. 2d 583 (C.A. 5), relied on by petitioner, involved a direct contradiction between the defendant and the chief government witness, so that the corroboration was crucial. Cf. *Harrod* v. *United States*, 29 F. 2d 454 (C.A. D.C.).

The practice of having committee investigators fill in subpenas signed in blank by the committee chairman is not different from the practice of having judicial subpenas signed in blank which prevails in federal courts. See Rule 17(a), F.R. Crim. P.[14] In any case, the six months' acceptance of the subpena, without protest by either the union or the committee, indicates acquiescence by the former and ratification by the latter.

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[14] *Cudahy Packing Co.* v. *Holland*, 315 U.S. 357, is concerned with the delegation by administrative officers of the entire function of the subpena power to lower echelon officials where there is no express authority. There was no such delegation in the instant case; the subpena was signed by Senator McClellan.

4. Petitioner, who made no objection to the closing argument, now complains that it was unfair (Pet. 26–28). First, he claims that the mention of some of the specific names on the mutilated invoice constituted a reference to "criminals", "racketeers", "unsavory characters" and "persons of bad reputation" (P.A. 343–344, 347–348). Examination of the argument shows that the prosecuting attorney went out of his way to caution the jury about such matters (P.A. 343–344):

> Now, the purpose for bringing out whether or not Beck, Hoffa, Brennan, or Dorfman, or anyone else, has a bad reputation is not so that it will reflect in any way on the defendant, and it shouldn't, because anyone who had been in the labor movement or any other movement where there would be people who might have a bad reputation, you couldn't help of necessity but have some contact with them. That was not our purpose in bringing it out, and we don't want it considered against the defendant in that way. The purpose for our bringing it out, you will recall Mr. Presser testified from the minutes of the Joint Council meeting of August 14, 1958 * * * he was afraid that he might be fired from his job by the monitors, and that the cause of the firing could be an association with people of bad reputation. Now, we wanted to show that some of the people in this organization did have a

> bad reputation, or at least what might be considered a bad reputation, and that this would be another motive for Mr. Presser destroying the document or concealing his association with them from the public.

Thus, the summation made it crystal clear that the testimony with respect to people of bad reputation was to be considered only in regard to the question of petitioner's motive, based on his own testimony, and for no other reason. Moreover, petitioner did not request the court to limit this testimony in any manner (G.A. 35-37).

Petitioner also claims that the prosecuting attorney misstated the testimony of the champagne bucket salesman, Charles Schaeffer. The record shows that Schaeffer testified that petitioner called him in September 1958 and asked him whether he, Schaeffer, had any records of anything that had been sold to him or the Teamsters Union in the form of gifts and that particular reference was made to champagne masters. Schaeffer then called the selling company, and in turn asked for duplicate copies of any invoices pertaining to such sales. He was not able to obtain these copies from the company and so informed petitioner (P.A. 209). The prosecutor's argument that petitioner asked the salesman to obtain other copies pertaining to this gift was a fair interpretation of this testimony (P.A. 341-342; G.A. 33). Significantly, petitioner made no objection to this argument nor did he mention it when he refered to the salesman in his closing statement (G.A. 26). As petitioner points out here

(Pet. 28), the trial judge reached the same conclusion (P.A. 328).

5. The trial narrowed to the question whether petitioner mutilated the invoice and concealed the other paper. Sheridan gave direct testimony that, in examining certain files in petitioner's office on September 9, 1958, he noted the invoice with its list of eight names, and that when he returned on September 13, 1958, the invoice had been mutilated so as to remove the names. All persons who had an opportunity to do this deed replied that they had not (P.A. 173–174, 192, 194). Petitioner's specific interest in this particular invoice is indicated by his call to the salesman (Schaeffer), as well as by the evidence of his motives for destroying the document. Finally, the jury was impressed, as were both courts below, by the documented contradiction of petitioner's testimony that he was absent from Cleveland between September 9 and 13. The jury was properly allowed to resolve the issue of guilt on ample direct and circumstantial evidence.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

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In the Supreme Court of the United States

OCTOBER TERM, 1961.

No. 278.

WILLIAM PRESSER,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT.

REPLY BRIEF OF PETITIONER.

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1. A substantial reason petitioner's writ should be granted is that assuming the proper names on the invoice were removed and the document which contained a list of those names was withheld, the proper names bore no reasonable relation to the subject under inquiry by the Committee. That this is true appears from the testimony of Senator McClellan, wherein he states that the question was the use of union dues for the payment of Christmas gifts (43a).

(a) There is no support in the entire record in this case to justify the statement that both aspects of pertinency were amply met" by the Government. If, as stated by Senator McClellan, the question under inquiry by the Committee was the use of union dues money for Christmas gifts then clearly the Committee had all of the data of

Joint Council 41 that bore on that subject before September 9, 1958 (137a; 175a; 176a; defendant's Exhibit B, 319a; 320a; 321a).

The response of Senator McClellan to the question put by the trial court (43a) after petitioner's objection to testimony regarding those eight proper names had been sustained (42a), indicates the scope of the subject under investigation by the Committee. Therefore, even if the Committee had not obtained the list of eight names, which it actually did (69a; Government's Exhibit 10, 315a), the investigation of the Committee would not have been impeded or obstructed.

The significance of the Senator's testimony is not that it supports the assertion of the Government that both aspects of pertinency were met, but the contention of the petitioner that no act of his obstructed or impeded the exercise of the Committee's due and proper power of inquiry.

(b) The petitioner does not contend that the statute was not violated "because the information was ultimately obtained by the Committee from other sources." The petitioner contends that the testimony of the chairman of the committee (43a) discloses that the Committee was not at all interested in the proper names listed on the Deutsch invoice and the accompanying paper.

Whether or not the Congressional ban set out in the statute is limited to "successful obstruction" seems to be beside the point because the attempt to impede or obstruct is otherwise limited by the statute to the due and proper exercise of the law under which the proceedings are being had, or the due and proper exercise of the power of inquiry under which the investigation is being conducted. There was no attempt (or endeavor) to impede or obstruct any legitimate activity of the Committee under the statute.

2. The Government characterizes the subjects upon which the Chairman of the Committee testified, with a reference to the record where such testimony may be found, and concludes that the petitioner's various objections to the Chairman's testimony are groundless. Of special interest here is the characterization of Senator McClellan's testimony as the "manner in which the Committee had been obstructed by the acts of the petitioner (P. A. 41-46)."

During the course of the trial the Government attempted to convey to the jury the Committee's interest in those individuals whose names appeared on the demanded documents by reading from the Committee's Interim Report the ex parte conclusions of the Committee about those individuals (42a). Inasmuch as the Committee's investigations, which resulted in its conclusions of the Interim Report, did not concern the petitioner and were concluded sometime before Sheridan served a subpoena on Joint Council 41 (25a, 58a), the trial court properly sustained the petitioner's objection to such evidence as being immaterial to the charges made against the petitioner (42a).

The court, who erroneously treated pertinency as a matter of fact (36a), compounded his error by permitting Senator McClellan to invade the province of the jury by concluding from his testimony from the Interim Report that the Committee would be obstructed or impeded in its business if it had not gotten the names on the demanded documents at the time of Sheridan's second visit.

The prejudice of this testimony to the petitioner is readily discernible from a consideration of the use to which it was originally applied by the prosecutor and the use to which the Government is presently attempting to apply it. The prosecutor originally claimed that this testimony was evidence of the bad reputation of the petitioner's associates

(344a). It is now contended that this testimony was relevant to the questions of pertinency and motive (Brief, p. 13). If the question under inquiry by the Committee was the use of union dues for payment of Christmas gifts (43a), Senator McClellan's comments, based upon the conclusions in the Interim Report concerning six recipients of a gift in one year, could have no logical bearing upon the propriety of the practice of using union dues for gifts. The practice of giving gifts was instituted by Joint Council 41, and was in effect, some years before petitioner became President of Joint Council 41, and continued in effect as an authorized practice for several years following 1955 (Defendant's Exhibit G, 224a, 232a).

(a) The petitioner has not changed his position upon appeal or in this petition from that taken at the trial. The issue of pertinency is a part of the Government's case and must be ruled upon by the trial court as a matter of law. The petitioner objected to the testimony of Senator McClellan on those matters which the Government contends it was introduced to prove pertinency at the trial (35a, 36a, 37a). The prejudice to the petitioner resulted from the trial court's refusal to recognize his obligation to determine the issue of pertinency as a matter of law (35a, 36a).

The petitioner did not object to the instruction offered by the Government because such an objection at that point of the trial would have been futile. The prejudice to the petitioner of permitting the testimony of Senator McClellan to go to the jury as evidence of pertinency had been completed at the time that the Government asked the court to determine that issue as a matter of law.

The instance referred to by the Government (*U. S. v. Moran*, 194 F. 2d 623, *cert. den.* 343 U. S. 965) in which the probative value of evidence of pertinency was submitted to the jury does not warrant the categorical statement that the submission of that issue to the jury in the trial of the petitioner was not error, or at least was probably favorable to the petitioner.

First of all the trial court did not consider that the issue of pertinency was a mixed question of law and fact (35a, 36a).

Second, the assertion that the trial court implicitly ruled on the matter of pertinency by overruling petitioner's motion for acquittal is completely without foundation. The trial court was very explicit in overruling petitioner's motion for acquittal when he stated that, while he knew it was not the law he felt the trial court had no right to direct a verdict of acquittal in a criminal case (214a).

Third, the *Moran* case is not analogous to that of petitioner because, unlike Moran, at no time during his trial did the petitioner request that the question of pertinency be submitted to the determination of the jury.

(b) The petitioner contends that the testimony of Senator McClellan (45a, 46a) was prejudicial to a fair trial because (1) it purported to relate to pertinency and pertinency was a question of law for the court and not a question of fact for the jury; and (2) the conclusions of Senator McClellan usurped the function of the jury even if pertinency were a question of fact.

(d) The characterization of the recipients of the gifts was clearly prejudicial to the rights of the petitioner. First of all the investigation from which the Committee characterized the recipients had been concluded before the Committee investigator served his subpoena on Joint Council 41. Second, the investigations which formed the basis of the Interim Report did not involve the petitioner. Third, the characterization of the recipients was arrived at from the ex parte statements of investigators who were not subject to cross examination (52a) at the time their testimony was given. And fourth, the characterization of the recipients was given to the jury in the petitioner's trial as ultimate and conclusive facts as proof of the pertinency of those names to the subject then under inquiry by the Committee.

(e) It is true, as asserted by the Government, that the record does not show that the testimony of Senator McClellan who read the transcript of the testimony of Sheridan before the Committee was offered to corroborate Sheridan. At the trial the Government claimed that it was offered to verify the pertinency of certain matters which Sheridan would testify to before those matters were placed into evidence directly (35a). If there is a difference between prior corroboration and verifying the pertinency of certain matters before they are put into evidence the difference is not without prejudice to the petitioner.

The fact that the transcript did not go to the jury room is absolutely no test of the prejudice that resulted to the petitioner of this evidence which was submitted for the jury's consideration.

The petitioner in his testimony did dispute the facts as Sheridan is reported to have testified before the Committee. The petitioner's main defense was that he was not guilty of any of the acts charged against him. If the documents were torn or missing that circumstance alone was no proof that petitioner had torn or secreted the documents because he was away from his office most of the time before Sheridan's visits and he did not have exclusive control of the documents involved during that time (165a).

The direct conflict between petitioner and Sheridan was their testimony as it related to Sheridan's visits to the office of Joint Council 41. Both Sheridan and the petitioner knew of the practice of giving receipts for materials of Joint Council 41 that was in effect between the Joint Council 41 and the Committee Field Office (96a, 227a, 228a).

Sheridan's notes could not be considered as corroborative of his trial testimony because of the conflict that existed between his testimony and that of the petitioner. However, characterizing the notes as the chief corroboration of Sheridan's testimony is a tacit admission on behalf of the Government that Senator McClellan's testimony was, in fact, meant to corroborate Sheridan.

3. To obstruct the due and proper exercise of its power of inquiry the Committee must be investigating some subject of which the witness must be apprised. To manifest its desire to examine a witness or certain documents the Committee is required to proceed in accordance with the authority which has created it and limits its scope of activity (Tit. 2 U. S. C. Sec. 190b; Sen. Res. 74, Gov. Ex. 5-6, 312a; Gov. Ex. 6, 313a).

As a general statement, and under certain circumstances which do not appear in this case, mutilating documents may constitute obstruction of justice even though those documents are not under subpoena. However, in those instances where this general statement is applicable the proceedings are judicial in nature, and a knowledge of the proceeding accompanied by any attempt to thwart the judicial process is clearly obstruction of justice.

However, a Congressional investigating committee is not a judicial tribunal and the issuance of subpoenas by such committees is not governed either by Rule 17(a) of the Fed. R. of Crim. P. or Rule 45(a) of the Fed. R. of Civ. P. Whether or not the practice of the Committee in this regard is the same as the practice in Federal courts under the express grant of Rules 17(a) and 45(a) certainly is not dispositive of the validity of the subpoena involved in this case. Title 2 U. S. C. § 190(b), Senate Resolution 74 (Government's Exhibit 5-C, 312a) and Rule 4 of the Rules of Procedure of the Committee (Government's Exhibit 6, 313a) should be the petitioner's guarantee of his rights before the Committee in the same manner that Rules 17(a) and 45(a) provide for blank subpoenas as a litigant's guarantee of his right to compel the attendance of witnesses in his own behalf.

To say that after Sheridan demanded the subject documents the petitioner had knowledge that the Committee wanted those documents completely begs the question. It is the petitioner's contention that a valid subpoena issued by the Committee is the source of petitioner's knowledge of the demands of the Committee and the extent of the petitioner's obligation toward the Committee. It was at the trial that it was disclosed that the Committee did not issue the subpoena (213a).*

4. The vice of the testimony of Senator McClellan is clearly displayed in the quotation from the prosecutor's final argument to the jury. Although the court purported to limit the use of the testimony of Senator McClellan concerning those persons referred to in the prosecutor's argument (43a) neither the Government nor the jury respected the limitation.

The prosecutor's argument makes it crystal clear that the testimony of Senator McClellan (41a-47a) was offered and used by the Government to prove to the jury that some of the people (those listed on the invoice) in the Teamsters Union have bad reputations and that the petitioner removed those names from one document and withheld the other to conceal his association with these people of bad reputation (344a).

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* A completely analogous principle obtains regarding unlawful searches and seizures. The validity of a search warrant is always relevant and resistance to a search under an invalid warrant is neither illegal nor obstruction of justice. *Sparks v. U. S.*, 90 F. 2d 61 (6th Cir. 1937).

After this refusal by the prosecutor to respect the limitation placed upon Senator McClellan's testimony by the trial court (43a), the Government now asserts that the petitioner has no cause for complaining because he failed to request the trial court to limit this testimony of Senator McClellan (Brief, p. 17) and argues that the testimony was properly admissible to prove pertinency (Brief, p. 13).

That the jury did not respect the court's limitation of Senator McClellan's testimony cannot be doubted.

According to the prosecutor (349a), the trial court (328a) and the court of appeals (Petition, 34), the most damaging evidence against the petitioner was that of Charles Schaeffer. The Government now contends that its prosecutor's interpretation of Schaeffer's testimony was fair and that the trial court reached this same conclusion (Brief, 17 and 18). Schaeffer testified that he called the Rudolph Deutsch Company and asked that company whether it had *any* bills or invoices of sales to the Teamsters or the petitioner and, if so, he (Schaeffer) "would like to have duplicate copies of **them**" (209a).

The prosecutor's fair interpretation of this witness consisted of his argument to the jury that Schaeffer contacted the Rudolph Deutsch Company "for the purpose of obtaining Rudolph Deutsch's copy of the records of these gifts" (341a); three years after the original transaction the petitioner, through Schaeffer, attempted to get "the other copies of those records" (342a); and the petitioner, through Schaeffer, fraudulently tried to get "the copy from the files of the Rudolph Deutsch Company" to make sure that he covered his tracks (349a).

When the trial court concludes that the unfair distortion of Schaeffer's testimony was actually the true testimony, the effect of the distortion upon the jury must be great.

5. The issues involved in this case are not confined within the narrow limitation of whether or not the petitioner mutilated or withheld a document. The propriety of the actions and procedures of an investigating committee as against the rights of a citizen is the broad issue involved in this case which escaped the trial court and the jury.

CONCLUSION.

For the reasons set forth in the petition for a writ of certiorari and herein, it is respectfully submitted that the writ for certiorari should be granted.

Respectfully submitted,
EDWIN KNACHEL,
Counsel for Petitioner.

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In the Supreme Court of the United States

OCTOBER TERM, 196~~1~~2

No. ~~278.~~ 25

WILLIAM PRESSER,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

BRIEF OF PETITIONER

On Writ of Certiorari To the United States Court of Appeals For the Sixth Circuit.

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In the Supreme Court of the United States

OCTOBER TERM, 1961.

No. 278.

WILLIAM PRESSER,
Petitioner,
vs.
UNITED STATES OF AMERICA,
Respondent.

BRIEF OF PETITIONER

On Writ of Certiorari To the United States Court of Appeals For the Sixth Circuit.

OPINION BELOW.

The opinion of the Court of Appeals is set forth at page 404 of the Transcript of Record, and is officially reported at 292 F. 2d 171 (6th Cir. 1961).

The memorandum opinion of the District Court denying Petitioner's motion for judgment of acquittal or for a new trial appears at page 326a of Transcript of Record. The memorandum opinion of the District Court has not been officially reported.

JURISDICTION.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1) to review the judgment of the Court of Appeals affirming the Petitioner's conviction for violation of 18 U. S. C. § 1505.

On July 6, 1961, the Court of Appeals entered its judgment against Petitioner. No petition for rehearing was filed on behalf of Petitioner.

On August 1, 1961, petition for certiorari was filed on behalf of Petitioner.

Certiorari was granted October 23, 1961 (*Presser v. United States*, ____ U. S. ___, 7 L. Ed. 2d 86).

Printed transcript of record transmitted by the Clerk of the Supreme Court to counsel for Petitioner on December 18, 1961.

STATUTES INVOLVED.

U. S. Const. amend. V.

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Title 28 U. S. C. § 1254(1).

§ 1254. Courts of appeals; certiorari; appeal, certified questions.

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

* * * (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree; * * * June 25, 1948, c. 646, 62 Stat. 928.

Title 18 U. S. C. § 1505.

§ 1505. Influencing or injuring witness before agencies and committees.

Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any witness in any proceeding pending before any department or agency of the United States, or in connection with any inquiry or investigation being had by either House, or any committee of either House, or any joint committee of the Congress; or

Whoever injures any party or witness in his person or property on account of his attending or having attended such proceeding, inquiry, or investigation, or on account of his testifying or having testified to any matter pending therein, or;

Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede the due and proper administration of the law under which such proceeding is being had before such department or agency of the United States, or the due and proper exercise of the power of inquiry under which such inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress—

Shall be fined not more than $5,000 or imprisoned not more than five years, or both. June 25, 1948, c. 645, 62 Stat. 770.

Title 2 U. S. C. § 190b.

§ 190b. Authority of Senate standing committees and subcommittees; sitting while Senate or House in session.

(a) Each standing committee of the Senate, including any subcommittee of any such committee, is authorized to hold such hearings, to sit and act at such times and places during the sessions, recesses, and adjourned periods of the Senate, to require by subpena or otherwise the attendance of such witnesses and the production of such correspondence, books, papers, and documents, to take such testimony and to make such expenditures (not in excess of $10,000 for each committee during any Congress) as it deems available. Each such committee may make investigations into any matter within its jurisdiction, may report such hearings as may be had by it, and may employ stenographic assistance at a cost not exceeding 25 cents per hundred words. The expenses of the committee shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman.

(b) No standing committee of the Senate or the House, except the Committee on Rules of the House, shall sit, without special leave, while the Senate or the House, as the case may be, is in session. Aug. 2, 1946, c. 753, Title I, § 134(a), (c), 60 Stat. 831, 832.

Rules of Procedure for the Senate Select Committee on Improper Activities in the Labor or Management Field. (Gov. Ex. 6; R. 313a.)

* * * * *

> 4. Subpenas for attendance of witnesses and the production of memoranda, documents, and records shall be issued by the Committee Chairman or by any other Member of the Committee designated by him in writing.

* * * * *

QUESTIONS PRESENTED FOR REVIEW.

I. Whether the Petitioner could have obstructed or impeded, or endeavored to obstruct or impede, the due and proper exercise of the Committee's power of inquiry in view of the fact that the subpoena duces tecum, the alleged violation of which is the basis of the Petitioner's indictment and conviction, was not issued in accordance with Title 2 U. S. C. § 190b(a), the Rules of Procedure for the Senate Select Committee on Improper Activities in the Labor or Management Field, paragraph 4, and Senate Resolution 74, Eighty-fifth Congress.

II. Whether the testimony of the Committee Chairman was admissible against the Petitioner for any purpose advanced by the Government at the trial.

III. Whether the Petitioner could have obstructed or impeded, or endeavored to so obstruct or impede, the due and proper exercise of the Committee's power of inquiry when the Government's evidence fairly discloses that the Committee obtained the information it is claimed it sought without obstruction or impediment.

IV. Whether the misconduct of the Government's counsel in his final argument to the jury deprived the Petitioner of his right to a fair and impartial trial.

V. Whether the evidence presented against the Petitioner can sustain a conviction for the violation of Title 18 U. S. C. § 1505.

STATEMENT OF THE CASE.

William Presser, the Petitioner, a lifelong resident of Cleveland, Ohio, has been affiliated with the labor movement for 34 years (R. 220a). He became associated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereinafter referred to as "Teamsters Union") in 1951, and became President of its Joint Council 41 in 1953 (R. 220a).

Joint Council 41 is an administrative unit of the Teamsters Union and is composed of affiliated local unions within its jurisdiction in the State of Ohio. Joint Council 41 is one of three such councils in the State of Ohio, and together these councils compose what is known as the "Ohio Conference of Teamsters" (R. 196a, 221a, 222a).

On March 23, 1960, the Petitioner was indicted and charged with the violation of the provisions of Title 18 U. S. C. § 1505 (R. 5a), to which indictment the Petitioner entered his plea of not guilty on April 1, 1960 (R. 1a). On May 31, 1960, the case was called for trial before Judge Paul Jones and a jury in the United States District Court for the Northern District of Ohio, at Cleveland.

On June 6, 1960, the jury returned its verdict of guilty (R. 3a). On June 24, 1960, the Petitioner's alternative motion for judgment of acquittal or a new trial was overruled by the trial court (R. 4a), and the Petitioner was sentenced to eight months confinement which was not to run concurrently with any sentence imposed by any other court (R. 4a).

On July 1, 1960, the Petitioner perfected his appeal to the United States Court of Appeals for the Sixth Circuit (R. 4a), which court, on July 6, 1961, affirmed the judgment of the district court (R. 408).[1]

---

[1] *United States v. Presser*, 292 F. 2d 171 (1961).

On August 1, 1961, Petitioner filed his petition for certiorari which this Court granted on October 23, 1961.[2]

On March 21, 1958, Joint Council 41 was served with a subpoena duces tecum, dated March 19, 1957 [sic 1958] (Gov. Ex. 9; R. 313a). This subpoena was served upon William Presser, the Petitioner herein (R. 85a, 89a), by Walter J. Sheridan, an investigator for the Senate Select Committee on Improper Activities in the Labor or Management Field (hereinafter referred to as "Committee") (R. 56a).

The subpoena purported to require Joint Council 41 to produce forthwith before the Committee all of its records for the nine year period from January 1, 1949, to January 1, 1958, including cash receipts, disbursement books, ledgers, cancelled checks, check stubs, day books, paid bills, records of loans, correspondence files, memoranda, pay roll records, minutes of meetings, records of all bank accounts, opened and closed, and any other records relating to Joint Council 41 (R. 57a; Gov. Ex. 9; R. 313a).

Following the service of the subpoena upon Joint Council 41, an arrangement was effected between Committee personnel in the Field Office at Cleveland, Ohio, and Mr. Cozza and Miss Steuer, accountants and attorneys for Joint Council 41 (R. 59a), whereby the documents demanded by the subpoena were delivered to the Committee personnel in Cleveland (R. 24a, 25a, 59a, 60a, 63a, 86a, 87a, 147a). When these documents were delivered to the Cleveland Field Office, Mr. Reibesell, a government accounting office employee on loan to the Committee and stationed at Cleveland, gave Mr. Cozza a receipt for the delivered documents and addressed any questions concerning those documents to Mr. Cozza (R. 86a, 147a; Deft. Ex. B; R. 319a). This practice continued from shortly after the service of the subpoena upon Mr. Presser to August, 1958 (R. 86a).

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[2] *Presser v. United States,* U. S. , 7 L. ed. 2d 86 (1961).

In late August of 1958, Walter J. Sheridan was informed by the Committee counsel that the Teamsters Union had established an "Anti-Corruption Commission" (R. 61a). In view of the fact that ex-Senator Bender had been appointed to this Commission, Mr. Sheridan was sent to Ohio by the Committee counsel to attempt to establish whether there had been an association between ex-Senator Bender and the Teamsters Union (R. 62a). In pursuance of these instructions (R. 62a), Walter Sheridan went to the office of Joint Council 41 on September 9, 1958.

On this date Mr. Sheridan talked to the Petitioner and told him that he wanted to look through certain files (R. 63a). Mr. Presser referred Mr. Sheridan to his secretary, and the files of several filing cabinets were made available to Mr. Sheridan (R. 66a). Of the many files that Mr. Sheridan examined, he noticed in one of these files an envelope marked "Xmas List," and the envelope contained a voucher from the Rudolph Deutsch Company and a sheet of yellow paper with a list of names thereon (R. 68a). Eight names appeared on the face of the voucher and these same names also appeared on the sheet of yellow paper along with some other names (R. 68a). From all of the files examined by Mr. Sheridan, he made notes concerning only the voucher and the sheet of yellow paper (R. 68a, 69a; Gov. Ex. 13; R. 317a). Mr. Sheridan's notes contained all of the details that were on the invoice and indicated that in addition to the names listed on the invoice other names were listed on the yellow sheet of paper (R. 69a).

When Mr. Sheridan was ready to depart the office of Joint Council 41 he stated to Mr. Presser that he would like to take four of the several files from the filing cabinet, one of which contained the invoice from the Rudolph Deutsch Company and the sheet of yellow paper (R. 70a).

Mr. Sheridan testified that Mr. Presser did not want to allow the files to be taken from the office at that time because he wanted to have photostats made of them. To this Mr. Sheridan agreed, and when he returned on September 13, 1958, to get the files they had not been photostated. Mr. Sheridan again examined the files and discovered that the invoice had been torn and defaced and the yellow sheet of paper was missing (R, 71a, 72a).

Mr. Presser testified upon this same matter that he was agreeable to permitting Mr. Sheridan to retain those files which Mr. Sheridan indicated he wanted, However, Mr. Presser felt that Mr. Sheridan should give a receipt for what he was taking from the office of Joint Council 41 (R. 227a) in conformity with the practice established between Mr. Cozza and the Field Office (R. 147a). Because of the late hour, Mr. Sheridan stated that he would be unable to give a receipt for all of the matters that he was taking, but either Mr. Sheridan or Mr. Presser suggested photostating the contents of the files, to which there was apparent agreement. When Mr. Sheridan returned on September 13, he found the files were not photostated and he again examined the contents. In a show of temper, Mr. Sheridan accused the Petitioner or some teamster of destroying a piece of paper, and in the same show of temper departed with the files without first giving any receipt to the Petitioner therefor (R. 231a, 232a).

Emphasis has been supplied throughout this brief by bold face type.

SUMMARY OF ARGUMENT.

I.

The Petitioner was not in violation of any provisions of Title 18 U. S. C. § 1505 because the Committee was not in the due and proper exercise of its power of inquiry pursuant to Senate Resolutions 74, 88 and 221.

The subpoena duces tecum, served upon the Petitioner and directing Joint Council 41 to produce forthwith before the Committee the documents named in said subpoena, was not issued pursuant to Title 2 U. S. C. § 190b (a), Senate Resolution 74 (Gov. Ex. 5-C; R. 312a), and paragraph 4 of the Rules of Procedure, unanimously adopted by the Committee (Gov. Ex. 6; R. 313a). *Cudahy Packing Co. v. Holland*, 315 U. S. 357 (1942).

A subpoena duces tecum signed by the Committee Chairman, but otherwise executed and directed by a Committee employee, is an unlawful delegation of the power of compulsory process by the Committee. Under such circumstances the Committee was not engaged in the due and proper exercise of the power of inquiry under its charter and, therefore, cannot invoke the criminal provisions of Title 18 U. S. C. § 1505 against the Petitioner.

II.

The testimony of Senator McClellan, admitted into evidence against the Petitioner, cannot be justified as probative evidence supporting any material element of the charges against the Petitioner. The testimony of Senator McClellan was erroneously admitted into evidence against the Petitioner to support the issue of **pertinency**. Both aspects of pertinency are questions of law to be determined by the court. However, during the Petitioner's trial, the court treated pertinency generally as a question of fact and then permitted Senator McClellan to usurp the function of the jury by stating that the proper names on the demanded documents were pertinent to the question under inquiry by the Committee. *Braden v. United States*, 365 U. S. 431 (1961); *Watkins v. United States*, 354 U. S. 178 (1957); *Sinclair v. United States*, 279 U. S. 263 (1929).

Senator McClellan was permitted to read the Committee "findings" into the record as evidence that the Petitioner had **knowledge** of the relevancy or pertinency of the proper names on the demanded documents to the question under inquiry by the Committee. The hearings from which the "findings" were made involved matters which did not concern the Petitioner and were concluded before the Petitioner was served with the subpoena for the violation of which he has been indicted and convicted under Title 18 U. S. C. § 1505.

Under the circumstances of this case the knowledge chargeable against the Petitioner must be embodied in the subpoena. *United States v. Pitotto*, 267 Fed. 603 (Ore. 1920).

The **proper names** listed on the demanded documents were not pertinent or relevant to the inquiry then being conducted in the exercise of the Committee's due and proper power of inquiry. Nor did the names bear a reasonable relation to the subject matter of the Committee's inquiry. Therefore, the Petitioner did not obstruct or impede the due and proper exercise of the power of inquiry under which the Committee was conducting its investigation. *Deutch v. United States*, U. S. , 6 L. ed. 2d 963 (1961).

Senator McClellan was permitted to read the testimony Walter Sheridan gave before the Committee relative to

Sheridan's visit to the offices of Joint Council 41. The purpose of Senator McClellan's testimony in this regard was to permit the Senator "to testify as to their pertinency" (R. 35a) before these matters were placed in evidence directly through the testimony of Sheridan himself. In view of the conflict in the testimony between the Petitioner and Sheridan, the prior corroboration of Sheridan's testimony deprived the Petitioner of a fair and impartial trial. *Mellon v. United States*, 170 F. 2d 583 (5th Cir. 1948).

III.

The testimony of Senator McClellan fairly discloses that the interest of the Committee regarding the Christmas gifts given by Joint Council 41 was confined to whether or not union funds were used for such purpose. Inasmuch as the Committee had received the documents of Joint Council 41 disclosing this fact, the proper names were not relevant or pertinent to the question under inquiry by the Committee.

IV.

The repeated references by Senator McClellan during his testimony to criminals, racketeers and unsavory characters provided a background for the Government's prosecutor to distort and misstate the testimony against the Petitioner, and thus deprive the Petitioner of a fair and impartial trial. *Watkins v. United States*, 354 U. S. 178 (1957); *McNabb v. United States*, 318 U. S. 332 (1943).

V.

The Government's evidence does not disclose that the Committee was within the due and proper power of inquiry under its charter. Nor does the Government's evidence disclose with any degree of particularity the question or the subject matter then under inquiry by the Committee. Therefore, the Government has failed to establish the material elements of the offense set forth in Title 18 U. S. C. § 1505.

ARGUMENT.

I.

The indictment upon which the Petitioner stands convicted (R. 5a) charges that from January 30, 1957, through January 31, 1959, the Committee was duly conducting its investigation pursuant to the authority of Senate Resolutions 74, 88 and 221 of the 85th Congress.

The indictment further charges that **pursuant to the Rules of Procedure adopted by the Committee** on February 5, 1957, and in accordance with Senate Resolutions 74, 88 and 221, **the Chairman or any other Member of the Committee designated by him in writing** was authorized and empowered to issue subpoenas for the attendance of witnesses and the production of documents before the Committee.

In accordance with the Senate Resolutions and the Rules of Procedure a subpoena, in terms as set forth in the indictment, was **duly issued** and served upon Teamsters Joint Council 41. On or about, and between, September 9, 1958, and September 13, 1958, the Petitioner unlawfully, wilfully and knowingly did corruptly influence, obstruct and impede **the due and proper exercise of the power of inquiry under which the Committee was conducting its investigation** in that the Petitioner:

a. altered, defaced and tore, and partially destroyed, concealed and withheld from the Committee a certain invoice of Joint Council 41 and,

b. concealed and withheld from the Committee an envelope marked "Christmas List," and a memorandum containing a list of names with various items of merchandise or amounts of money annexed thereto.

These documents, the indictment charges, bore a reasonable relation to the subject matter of the Committee's inquiry and were relevant to it, and were required to be produced in accordance with the subpoena served upon Joint Council 41.

The Government's evidence disclosed that in the indictment and conviction of the Petitioner for the violation of Title 18 U. S. C. § 1505 there has been not only a failure of any insistence upon procedural regularity, there has been a complete lack of such regularity.

Senate Resolution 74 established the Committee, and it provides in part (Gov. Ex. 5-C; R. 312a):

> "* * * Sec. 2(a) **The select committee shall consist of 8 members * * *, and shall, * * * adopt rules of procedures not inconsistent with the rules of the Senate.**
>
> * * *
>
> "Sec. 4. **For the purposes of this resolution the select committee is authorized as it may deem necessary and appropriate to** * * * (4) **require by subpena or otherwise the attendance of such witnesses and production of such correspondence, books, papers, and documents;** * * *"

Title 2 U. S. C., § 190 b (a) provides in part:

> "Each standing committee of the Senate, including any subcommittee of any such committee, is authorized * * * to **require by subpoena or otherwise the attendance of such witnesses and the production of such correspondence, books, papers, and documents,** * * * as it **deems** advisable. * * *"

Paragraph 4 of the Rules of Procedure of the Senate Select Committee on Improper Activities in the Labor or Management Field (Gov. Ex. 6; R. 313a) provides:

> "Subpenas for attendance of witnesses and the production of memoranda, documents, and records **shall be issued by the Committee Chairman or by any other Member of the Committee designated by him in writing."**

Senator McClellan testified that under the resolution establishing the Committee and under the rules of the Committee itself, the Chairman had the authority to issue subpoenas (21a, 22a).

Walter J. Sheridan, an investigator for the Permanent Subcommittee on Investigations of the Government Operations Committee of the Senate (R. 55a), testified as follows (R. 84a) concerning the issuance of the subpoena (Gov. Ex. 9; R. 314a) served upon the Petitioner and directed to Joint Council 41:

> "Q. And your recollection is that it [subpoena] was prepared here? A. No, my recollection is that the chances are it was prepared here. I can't say for certain that it was.
>
> **Q. And the chances are that if it was prepared here you filled in a subpoena signed by Senator McClellan that was blank, isn't that correct? A. That would be correct."**

There is no evidence in the record that the Chairman or any Committee Member, upon written authority from the Chairman, issued or authorized the issuance of the subpoena (Gov. Ex. 9; R. 314a) that the Petitioner is charged with violating. The exercise of the Committee's compulsory process through the "issuance" of its subpoena demanding the production of documents cannot be satisfied by the Chairman's signature attached to blank forms. Certainly the Committee, in the exercise of its delegated subpoena power from the Senate, must also determine the purpose for which documents shall be demanded and the institution or the person to whom its power of compulsory process shall be directed. *Cudahy Packing Co. v. Holland*, 315 U. S. 357 (1942); *Application of Barnes*, 116 F. Supp. 464 (N. D. N. Y. 1953), *rev.* 219 F. 2d 137 (2d Cir. 1955), *aff'd. sub nom. United States v. Minker et al.*, 350 U. S. 179 (1956).

The only evidence in the record concerning the "issuance" of the subpoena is that of the Committee investigator, Walter J. Sheridan (R. 84a).[3]

To permit an investigator, or any employee of the Committee, to determine to whom a subpoena shall be directed and to determine further what documents shall be demanded and for what purpose, under the color of compulsory process of the Committee, is a redelegation of the Committee's delegated power of compulsory process and a complete abdication of the Committee's power to investigate. Under such circumstances, the Committee is not serving as the responsible representative of Congress in collecting information for a legislative purpose, nor is it exercising its delegated power of compulsory process as an aid to its right to investigate for which it alone must be responsible, as required by the limitations of its authorizing resolutions and the provisions of its Rules of Procedure. *Watkins v. United States*, 354 U. S. 178 (1957).

The indictment charges that the subpoena was issued in accordance with Senate Resolutions 74, 88 and 221 and the Rules of Procedure adopted by the Committee.

When the testimony of the Committee investigator disclosed for the first time at the trial the manner in which the subpoena was "issued," the Petitioner moved the trial court to quash the subpoena (R. 212a) and followed by a motion for an entry of judgment of acquittal (R. 215a). Both of these motions were made at the close of the Government's case, and both motions were overruled.[4]

---

[3] Although Sheridan admits only that the "chances are" the subpoena was prepared and issued by the Committee employees in Cleveland, that practice is admitted by the Government (Brief of United States in Opposition to Petition for Certiorari, p. 15).

The United States Court of Appeals for the Sixth Circuit disposed of the Petitioner's contention that the committee had failed to invoke its power of compulsory process in the same manner as did the trial court (R. 407).[5]

Certainly those limitations upon the use of the compulsory process in furtherance of a legislative purpose advanced in *Watkins v. United States*, 354 U. S. 178 (1957), will have been totally ignored, if not openly flouted, if the conviction of the Petitioner is permitted to stand. Neither the view of the trial court nor that of the Court of Appeals can be reconciled with the view expressed by this Court in *Watkins v. United States supra*, at p. 215.

There is no precedent in the entire history of judicial decisions controlling the use of subpoena power by congressional investigating committees, and there is no justification in the light of the rights of the Petitioner to be protected in this lawsuit, to warrant an inference that the Committee had a right to delegate arbitrarily and indiscriminately its subpoena power to an investigator or employee of the Committee.

---

[4] Regarding the validity of the subpoena, the trial court "guessed" it was valid (R. 213a). In overruling Petitioner's motion for judgment following the verdict of the jury and the entry of judgment of conviction, the trial court stated, "It has not been shown that there was anything unlawful in the method used by the Committee in issuing subpoenas duces tecum" (R. 327a).

[5] The court stated, "* * * We agree with the trial court that there was nothing unlawful in the method used by the Committee in issuing the subpoena duces tecum. Moreover, appellant knew that the documents in question were wanted by the Committee, and, in such a case the existence of a valid subpoena is not vital to the charge of the obstruction of justice. * * *" (R. 407).

The abuses attendant upon the Committee's arbitrary delegation of its power of compulsory process to its employees were extensively considered in *Cudahy Packing Co. v. Holland*, 315 U. S. 357 (1942).[6]

It is the Petitioner's contention that a subpoena duces tecum to be valid must be issued in accordance with the provisions of Title 2 U. S. C. § 190b, Senate Resolution 74, and the Rules of Procedure adopted by the Committee, and that a validly issued subpoena is the *sine qua non* to the invocation of the Committee's power of compulsory process. *Cudahy Packing Co. v. Holland, supra.* The *sine qua non* to the conviction of Petitioner for the violation, obstruction or impediment of the compulsory process of the Committee as laid in the indictment is the issuance of a valid subpoena by the Committee. *McNabb v. United States*, 318 U. S. 332 (1943); *United States v. Pitotto, et al.*, 267 Fed. 603 (D. Ore. 1920).

If the Committee failed to comply with the provisions of Title 2 U. S. C. § 190b(a) and its own Rules of Procedure, it cannot be said that the Committee was in the due and proper exercise ~~of the~~ investigative power granted by Senate Resolutions 74, 88 and 221. If the Committee was not in the due and proper exercise of its investigative power, the Petitioner cannot be said to have obstructed or impeded, or endeavored to obstruct or impede, the due and proper administration of the law under which the Committee was conducting its investigation.

Although the contention of the Petitioner is directed to the complete lack of procedural regularity by which the Committee has attempted to establish its right to investigate through the power of compulsory process, it is nonetheless substantial when it is considered that the Petitioner is deprived of his liberty for the violation of a criminal statute. The Petitioner's position in this regard is not unlike countless other accuseds whom the courts have rescued from the arbitrary exercise of power in contravention of the accuseds' rights.

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[6] At p. 363: "* * * It is a power capable of oppressive use, especially when it may be indiscriminately delegated and the subpoena is not returnable before a judicial officer. * * * All these are cogent reasons for inferring an intention of Congress not to give unrestricted authority to delegate the subpoena power which it has in terms granted only to the responsible head of the agency."

Such arbitrary exercise of power has proven fatal to convictions under other, but analogous criminal statutes. *Christoffel v. United States,* 338 U. S. 84 (1949).[7]

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[7] *United States v. Bufalino,* 285 F. 2d 408, 416 (2nd Cir. 1960): "* * * Falsehoods given before non-judicial inquiries are not encompassed within 18 U. S. C. § 1503, the federal obstruction of justice statute, *United States v. Scoratow,* D. C. W. D. Pa. 1956, 137 F. Supp. 620. * * *"

Haili v. United States, 260 F. 2d 744, 745 (9th Cir. 1958): "Speaking generally, it might be said that many matters other than proceedings pending in court have to do with the administration of justice. Thus, the gathering of evidence and procuring of statements of witnesses by the Federal Bureau of Investigation is in a general way a functioning of the federal government with respect to the administration of justice. Yet it has been held that one who threatens to kill another if he gives any information to the Federal Bureau of Investigation cannot be found guilty under § 1503, Title 18. * * * Also, in a general way, it can be said that the supervision of a convicted prisoner in a penitentiary is a part of the administration of justice if that term is given a very wide meaning. We would be surprised, however, if it were held that conduct designed to encourage a prisoner to escape from a penitentiary could be punished under § 1503.".

Sparks v. United States, 90 F. 2d 61, 63 (6th Cir. 1937): "The validity of the search warrant is always relevant on the question of obstructing an officer in the performance of his duties. Resistance to a search carried out under an invalid warrant is not illegal. * * *"

Whipp v. United States, 47 F. 2d 496 (6th Cir. 1931): "* * * The chief meritorious question presented is, not whether a conspiracy existed to offer forceable resistance to such officer * * *, but * * * whether such employee was, at the time, in the lawful performance of his federal duties, for it is only when the resistance is offered 'in the execution of' such duties that a crime results."

(Continued on following page)

Those inferior federal courts which have dealt with this question have had no difficulty in discerning the vices

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(Continued from preceding page)

Rosner v. United States, 10 F. 2d 675, 676 (2nd Cir. 1926): "* * * But convenience does not rule, and we find no warrant of law for a United States attorney asserting that he administers justice when he writes notes, or for using this statute to give to his notes or verbal requests the quality of process."

Cooper v. United States, 297 Fed. 483, 484 (3rd Cir. 1924): "* * * The offence denounced by the statute has two essential ingredients—seizure of merchandise and rescue of merchandise seized. But there is more in it than this. There must be an unlawful rescue of merchandise lawfully seized * * * hence, lawful seizure is not only an ingredient preliminary to an unlawful rescue but it is a prerequisite. And the lawfulness of the seizure must be shown. * * *"

Salata v. United States, 286 Fed. 125, 126 (6th Cir. 1923): "It is clear from the uncontradicted testimony of the federal prohibition agent, Beilstein, that this search warrant was not issued by anyone having authority to issue the same, nor, as required by statute, upon probable cause, supported by affidavit."

United States v. Scoratow, 137 F. Supp. 620, 621, 622 (W. D. Penna. 1956): "* * * There appears to be no case which holds that interference with witnesses in an investigation being conducted by the Federal Bureau of Investigation, or any similar instrumentality of the government, violates section 1503, or any of its predecessor sections.

Section 1503 is a criminal statute, and as such must be strictly construed. It provides that acts which interfere with the 'due administration of justice' constitute offenses under it. * * * The Federal Bureau of Investigation is an investigating rather than a judicial arm of the government. It does not 'administer justice' within the meaning of section 1503."

In re Pacific Telephone & Telegraph Co., 38 F. 2d 833, 836 (N. D. Calif. 1930): "What I have said concerning the lack of statutory authority for the issuance of a subpoena by a commissioner in aid of an application for a search warrant is probably sufficient to establish the fact that the subpoena in the instant case is void, and that respondent cannot be held in contempt for refusing to obey it. * * *"

United States v. Pitotto, et al., 267 Fed. 603, 604 (D. Ore. 1920): "With such insufficient showing, it follows that the warrant issued by the commissioners was void, and did not authorize the revenue officers to make the search and seizure contemplated. It is only when the officer resisted is authorized by valid warrant to make search and seizure that the statute under which the indictment is preferred may be invoked."

attendant upon arbitrary and indiscriminate delegation of the subpoena power, and have required strict compliance by the committees with the authority of their organization. *Ex parte Frankfeld*, 32 F. Supp. 915 (D. C., 1940);[8] *Application of Barnes*, 116 F. Supp. 464 (N. D. N. Y.), (1953), *Rev.* 219 F. 2d 137 (2d Cir. 1955), aff'd *sub nom. United States v. Minker et al.*, 350 U. S. 179 (1956);[9] *United States v. Olson*, 134 F. Supp. 481 (E. D. N. Y., 1955).[10]

II.

The testimony of Senator McClellan was offered by the Government and was sought to be justified on the ground that such testimony was:

> A. Evidence that the question under inquiry by the Committee was the due and proper exercise of the power of inquiry under which the Committee was conducting its investigation. (R. 42a, 45a, 46a, 335.)
>
> B. Evidence that the **proper names** allegedly listed on the sheet of paper and the Deutsch invoice were pertinent or relevant to the question under inquiry by the Committee. (R. 41a, 45a, 46a, 335.)
>
> C. Evidence that the Petitioner had knowledge that the sheet of paper and the Deutsch invoice bore a reasonable relation to the subject matter of the

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[8] At p. 916: "* * * Congress intended to place the responsibility upon the committee itself, and it has prescribed what proceedings may be had when the committee has reported to the Congress— * * *."

[9] 116 F. Sup. 464, 467 "* * * the subpoena power must remain within the bounds of the legislative grant, nor overreach the authority granted by Congress, and in investigatory matters should be conferred in express and explicit terms for that purpose. In my own judgment, subpoenas should not issue upon hit or miss legal grounds."

[10] At p. 482: "That which took place on August 23, 1951 was not a hearing before the Congressional Committee, no member of which was present, but consisted of inquiries made by investigators in pursuit of their authorized calling. * * *".

Committee's inquiry and were relevant to it. (R. 42a, 335.)

D. Evidence to corroborate the testimony of Walter J. Sheridan, whom the Government anticipated producing later in the trial (R. 35).

The testimony of Senator McClellan to which objection was taken cannot be justified for any purpose in the trial of this case. The real and substantial reason for producing McClellan was to attempt to construct a basis for the indictment of the Petitioner, which did not exist in fact at the time of the indictment, and to vouch for the truth of the testimony of the chief witness the Government was to produce subsequently during the course of the trial.

A.

The Committee was established on January 30, 1957, for one year (Gov. Ex. 5-C; R. 312a), and on January 27, 1958, the life of the Committee was extended to January 31, 1959 (Gov. Ex. 5-A; R. 309a). To these matters the Senator testified, and through him Senate Resolutions 74 and 88 (Gov. Exs. 5-C and 5-A; R. 312a; R. 309a) were introduced (R. 18a). Although it seems that it would have been unnecessary to introduce Government's Exhibits 5-A and 5-C through the Senator, it is not now being questioned nor is it assigned as a part of the error of the introduction of the Senator's testimony.

However, when the Government attempted to proceed further and elicit from the Senator what was the authority and scope of the duties of the Committee, the Petitioner objected repeatedly (R. 19a, 20a). Over these objections the Senator was permitted to testify, and, although he stated "these resolutions speak for themselves" (R. 19a), he was allowed to continue by paraphrasing Senate Resolution 74 which established the Committee (R. 19a).

Objections were interposed on behalf of the Petitioner to any further questioning of the Senator regarding particular acts and practices the Committee had investigated pursuant to its authorizing resolutions (R. 20a). These objections were overruled on the ground, apparently, that the investigations the Committee had conducted were material to the case and the investigative hearings were matters of public record (R. 20a).

Even though such hearings did not involve or concern the Petitioner, were not conducted in the presence of the Petitioner, and the Committee investigators who testified before such hearings were not subject to cross-examination (R. 52a), the Senator was permitted to discourse upon past investigations of other persons and other matters (R. 31a-38a, 42a-44a) and to state the Committee's so-called findings with respect to these hearings.

The Petitioner conceives the law to be that in these matters wherein federal courts are called upon to adjust the interests of the Government with the rights and privileges of its citizens, the question of relevancy and pertinency is **twofold.**

First, the subject under inquiry by the Committee must be relevant or pertinent to and within the scope of authority under which the particular investigation is being held. *Deutch v. United States* U. S. , 6 L. ed. 2d 963 (1961), *Barenblatt v. United States,* 360 U. S. 109 (1959); *Watkins v. United States,* 354 U. S. 178 (1957).

Second, the particular questions asked or the particular documents demanded must be relevant or pertinent to the subject under inquiry by the Committee. *Deutch vs. United States, supra; Barenblatt v. United States, supra; Watkins v. United States, supra.*

Although the Petitioner recognizes that "pertinency" is not made specifically an element of the offense of Title

18 U. S. C. § 1505, "pertinency" does become a material element of the crime if, as here, an individual is charged with obstructing or impeding the due and proper power of inquiry of a congressional investigating committee. *Deutch v. United States*, ___ U. S. ___ 6 L. ed. 2d 963 (1961); *Watkins v. United States*, 354 U. S. 178 (1957).[1] "The Government does not contend that no such element is necessary to prove obstruction of justice."[2]

In *Watkins v. United States, supra*, at pages 206 and 214 the court unmistakably differentiated between the concept of relevancy or pertinency in the two instances above referred to. Later the same differentiation was made in *Deutch v. United States, supra*.

The question of the relevancy or pertinency of the subject under inquiry by the Committee to the scope of authority under which the particular investigation is being held (referred to as jurisdictional pertinency in *Watkins v. United States, supra*) must be determined by the trial court as a matter of law; and the submission of this question, together with evidence thereof, to the jury is prejudicial error. *Deutch v. United States, supra; Watkins v. United States, supra*. Whether the subject under inquiry is within the scope of authority of the Committee (jurisdictional pertinency) must be determined by the court from the resolution establishing the Committee. If relevancy or pertinency cannot be established in this manner, the Government has failed to establish a vital element of the offense charged against the Petitioner. *Watkins v. United States, supra; United States v. Rumely,* 345 U. S. 42 at 44 and 45 (1953).

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[1] If there is any distinction between the specifically stated elements of the crime under Title 18 U. S. C. § 1505 and "pertinency" that distinction has been completely obliterated during the course of this litigation by the prosecuting attorney (R. 35a, 37a); the trial court (R. 35a, 36a, 37a, 294a, 296a, 304a, 326a, 327a); the Committee Chairman (R. 45a) and the Department of Justice (Brief in Opposition to Pet. for Cert. p. 20; Brief of Plaintiff-Appellee, p. 20).

United States v. Siegel, 152 F. Supp. 370 at 374 (S. D. N. Y. 1957), *aff'd* 263 F. 2d 530 (2nd Cir. 1959), *cert. den.* 359 U. S. 1012.

[2] Brief of Plaintiff-Appellee, p. 20.

The trial court at no point during the trial in the instant case made any determination that the subject under inquiry by the Committee was relevant or pertinent to the scope of the Committee's authority under which the particular investigation was being held.

The trial court, on the other hand, admitted the testimony of Senator McClellan as evidence of such relevancy or pertinency and submitted the issue of jurisdictional pertinency to the jury for its determination as a matter of fact. (R. 294a, 296a.)

The testimony of Senator McClellan was wholly inadmissible to determine the issue of jurisdictional pertinency. *United States v. Rumely, supra.* Therefore, the admission of the Senator's testimony, combined with the court's failure to determine the issue of jurisdictional pertinency as a matter of law, not only confused this issue in the minds of the jury, but deprived the Petitioner of his right to have a material element of the offense with which he was charged determined as a matter of law. *Deutch v. United States, supra; Watkins v. United States, supra; United States v. Rumely, supra.*

B.

To support the charges made against the Petitioner, it was incumbent upon the Government to prove that the **proper names** on the documents demanded, which documents were allegedly withheld or mutilated, were relevant or pertinent to the subject under inquiry by the Committee.

Again, the determination as to whether the proper names allegedly listed upon the documents demanded were relevant or pertinent to the subject under inquiry by the Committee must be determined by the trial court as a matter of law. *Barenblatt v. United States, supra; Watkins v. United States, supra; United States v. Rumely, supra; Sinclair v. United States*, 297 U. S. 263 (1929).

The trial court failed in any manner to make a determination as to whether the names listed upon the documents demanded were relevant or pertinent to the subject under inquiry by the Committee and permitted Senator McClellan, over the repeated objections of Petitioner, to state that in his opinion the proper names on the demanded documents were relevant or pertinent to the Committee's inquiry (R. 44a-47a). Upon this testimony from the Senator the trial court submitted the issue of the pertinency or relevancy of the proper names on the demanded documents to the subject under inquiry by the Committee to the jury for its determination as a matter of fact (R. 294a).[3]

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[3] In his charge, the trial court commented upon the testimony of Senator McClellan and the "elements of the offense" the Government was required to establish. The court then charged the jury, "If the Government establishes these facts in the manner I shall instruct you it is required to do, and as charged in the indictment, its case would be made out. It is essential that each element of the offense charged must be established in the manner stated, to warrant a verdict of guilty."

In overruling the Petitioner's objections to the introduction of testimony by Senator McClellan, the trial court stated: "Well, there is some merit to it. Of course the Government must prove that these matters were pertinent to their inquiry, that they bore a reasonable relation to the matter under investigation, and that is rather difficult to prove except in the way that it is being done.

"That was one of the elements of the offense that these were matters which the committee had under investigation and they were relevant and pertinent to their inquiry and that they were entitled to the records and papers which are the subject of this lawsuit in connection with that inquiry. I assume that is the basis?" (R. 35a, 36a.)

The Senator testified that if the sheet of paper and the Deutsch invoice in fact did contain proper names and those names were removed or withheld from the Committee, that fact alone would obstruct the investigation of the Committee because those names were pertinent to the Committee's inquiry (R. 45a, 46a).

The petitioner contends that the question of "relevancy or pertinency" of the names on the demanded documents to the subject under inquiry by the Committee should have been determined by the court as a matter of law. *Braden v. United States*, 365 U. S. 431 (1961); *Watkins v. United States, supra; United States v. Rumely, supra.* In failing to make this legal determination the Court permitted the witness to assume the Court's judicial function. *Rumely v. United States, supra.* The Court completely confounded his office when, after determining that relevancy or pertinency was a matter of fact for the jury (R. 35a-37a), he permitted the Senator, as a witness, to usurp the function of the jury and testify as to the ultimate and conclusive fact which, if the Court's view was correct, should have been submitted to the jury only as a question of fact (R. 45a, 46a).[4]

Not only was the introduction of any testimony by Senator McClellan incompetent to go to the jury to establish that the names on the demanded documents were relevant or pertinent to the subject under inquiry by the Committee, but the substance of the Senator's testimony was highly prejudicial to the petitioner for another reason (R. 42a-44a).

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[4] From the Government's special request to charge before argument (R. 387) it was argued in the Court of Appeals: "The prosecution requested the trial judge to tell the jury that the relevancy of the information sought by the Committee had been established as a matter of law (Appendix, p. 35b), but the trial judge, instead, deemed it a fact question and instructed the jury accordingly (Appendix, pp. 294a, 304a, 326a-327a)." Brief of Plaintiff-Appellee pp. 11, 12.

The Senator was permitted to characterize the individuals whose names (R. 43a, 44a), it is charged, were removed from the invoice by the Petitioner (R. 5a). Following the characterization of the individuals the Senator concluded that if in fact those individuals' names did appear on the invoice the Committee's business would have been obstructed because the Committee would have been deprived of information that was **pertinent** to its inquiry (R. 45a).

Going far beyond what could possibly be viewed as evidence of the relevancy or pertinency of the proper names allegedly listed on the demanded documents to the question under inquiry by the Committee, the Senator was permitted to comment upon and read "special findings and legislative recommendations of the Committee" (R. 25a-28a) from the Committee's Interim Report (Gov. Ex. 7; R. 25a-28a).[5]

After testifying to the legislative recommendations of the Committee, as set forth in the Interim Report, the Senator was permitted to read from and comment upon the Committee's "findings" with respect to "racketeers," "unsavory characters" and "criminals," some of whose names appeared on the Deutsch invoice (R. 41a-45a).

There is no better example of the obliteration of the Petitioner's right to a fair and impartial trial than the morass of confusion that engulfed the use of the Committee's Interim Report as evidence that the proper names on the demanded documents were relevant or pertinent to the subject under inquiry by the Committee.

Upon objection to the use of the Interim Report, the Government's attorney stated one purpose for its admission

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[5] Gov. Ex. 7, the Committee's Interim Report was identified (R. 25a) and received in evidence over objection (R. 28a), but was not submitted to the jury for its deliberations. (R. 213a.)

(R. 42a) and Senator McClellan stated another purpose when questioned by the court (R. 43a). The court, after sustaining the Petitioner's objection, permitted testimony from the report for the limited and particular purpose advanced by Senator McClellan (R. 43a). However, after the testimony from the report was placed before the jury through the Senator (R. 42a-47a) he was permitted to testify that the proper names on the demanded documents were pertinent to the Committee's inquiry (R. 45a).

Subsequently, when the Government sought to have the Interim Report submitted to the jury for its deliberations (R, 212a), the Petitioner renewed his objections to the use of the Interim Report (R. 212a). At this point the trial court sustained the objection and refused to permit any portion of the Interim Report to go to the jury because its materiality was "too remote" (R. 213a).

The trial court's duty in these matters is too well settled to warrant any doubt that the admission of the testimony of Senator McClellan was erroneous and prejudicial to the rights of the Petitioner and should not have been submitted to the jury as evidence of pertinency. *Sinclair v. United States*, 279 U. S. 263 (1929).

Inasmuch as the Government claims only that the Committee was obstructed in obtaining the names listed on the demanded documents (R. 5a), it must prove that those names were relevant or pertinent to the question under inquiry by the Committee. *Deutch v. United States, supra, Watkins v. United States, supra.*

The Government not only failed to prove that the names were pertinent to any question then under inquiry by the Committee (as more fully appears under Question III, *infra*), but the trial court subjected the Petitioner to the innuendos and insinuations of the Government's evidence by failing to determine pertinency as a matter of

Law. *Braden v. United States*, 365 U. S. 431 (1961); *Sinclair v. United States, supra*; *Keeney v. United States*, 218 F. 2d 843 (D. C. Cir. 1954); *United States v. Cross*, 170 F. Supp. 303 (D. C. Cir. 1959).

C.

One of the purposes for which the Government desired, (R. 42a) and for which the court permitted, the introduction of the testimony of Senator McClellan was to prove **knowledge** on the part of the Petitioner. Senator McClellan's testimony in this regard was to prove to the jury that the Petitioner had **knowledge** of the question under inquiry by the Committee and that the Petitioner had **knowledge** of the relevancy of the **names** on the Deutsch invoice and the paper to the question then under inquiry by the Committee.

That such was a purpose of the evidence from Senator McClellan is amply disclosed by the argument advanced by the Government to the jury (R. 334a) and by the charge of the court (R. 303a, 304a).[6]

The Government was permitted to cross-examine the Petitioner at length concerning his knowledge of the findings contained in the Committee's Interim Report. The Petitioner testified that he did not know of the Interim Report, had not read it and that it was only through the Government's case that he had "heard" that one of the persons listed in the Deutsch invoice was a "known consorter with criminals" (R. 255a, 256a).

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[6] Regarding the testimony of Senator McClellan the Government argued in the Court of Appeals that such testimony may not have been limited to the issue of pertinency, and stated: "Senator McClellan's testimony on these matters is therefore relevant and admissible on the issues of knowledge and motive, independently of the issue of pertinency." Brief of Plaintiff-Appellee, pp. 15, 16.

Regarding the same testimony the Government argued in its Brief in Opposition to Petition of Writ of Certiorari, p. 13: "This line of testimony was not offered to attack petitioner's character but because it was relevant to the questions of pertinency and of petitioner's motive to destroy the papers."

The Petitioner testified also that any findings that the Committee had made concerning the Teamsters he read in the newspapers (R. 255a).

The knowledge chargeable to the Petitioner as set forth in the indictment is the knowledge attributable to him through the subpoena (Gov. Ex. 9; R. 314a) served on March 21, 1958 (Indictment, 5a). The knowledge properly chargeable to the Petitioner in this case, which involves only the production of documents, must stem from the Committee's exercise of its compulsory process. (Note 7, Question I, *supra.*) The Government's attorney recognized the source of the Petitioner's knowledge in defining the purpose of the subpoena to the jury (R. 336).

In this regard it should be noted that the hearings which composed the Committee's Interim Report were heard, concluded and compiled prior to the date that Sheridan served his subpoena for Joint Council 41 records upon the Petitioner. The Interim Report, as the Committee's final document, was filed with the Senate on March 24, 1958 (R. 28a).

Rather than being evidence of the Petitioner's knowledge of the question under inquiry by the Committee, the continued reference to and reading from the Committee's Interim Report during the trial and in final argument was a calculated effort to affect the jury in the manner which was recognized and condemned by the court in *Bowers v. United States*, 202 F. 2d 447 at 452 (D. C. Cir. 1953).

D.

Senator John L. McClellan was called as the Government's first witness against the petitioner. Senator McClellan identified Government's Exhibit 8 as Volume 40 of the public hearings conducted by the Committee (R. 34a), and Volume 40 was introduced into evidence over the objections of the Petitioner (R. 36a). Following the indentification and introduction into evidence of Volume 40, Senator McClellan was permitted to read the testimony of Walter Sheridan given to the Committee on September 17, 1958 (R. 38a, 39a, 40a, 41a).

At the time of trial five reasons were advanced by the Government to justify the Chairman's reading the testimony of a committee investigator. One reason given by the Government's attorney was:

> "* * * Before we get certain matters in evidence directly I would like the Senator to be able to testify as to their pertinency. * * *" (R. 35a.)

Mr. Sheridan, who was in the corridor at the court while Senator McClellan testified, followed the Senator to the witness stand and testified concerning the facts which were allegedly the basis for his testimony before the Committee.

In view of the circumstantial nature of the case presented to the jury by the Government against the Petitioner, the Petitioner respectfully submits that the principle announced in *Mellon v. United States*, 170 F. 2d 583 (5th Cir. 1948) is controlling herein.

In reversing the trial court, the appellate court in the *Mellon* case stated as page 585 of its opinion:

> ". . . **we are forced to the conclusion that the admission of this evidence was prejudicial to Mellon, as tending to bolster the testimony of the witness Edgar, and doubly emphasize his evidence before the jury as against that of the accused.** The general rule is that a witness may not be corroborated or have his sworn testimony reinforced by proof that on previous occasions he has made the same statements as those made in his testimony. * * *."

United States v. Alu, 246 F. 2d 29 (2nd Cir. 1957); *United States v. Keller*, 145 F. Supp. 692 (D. N. J. 1956) uphold the same principle announced in *Mellon v. United States, supra.*

III.

That the proper names stated by Sheridan to have been listed on the sheet of paper allegedly withheld or the eight names on the Deutsch invoice allegedly mutilated were not pertinent or relevant to any question under inquiry by the Committee at the time they were allegedly mutilated and withheld was amply disclosed, albeit objectionable, by the testimony of Senator McClellan and that of Investigator Walter Sheridan.

The Government attempted to elicit from Senator McClellan the reason or purpose of Investigator Sheridan's visit to Ohio. The Senator testified that some investigation had been underway in Ohio and after George Bender had been appointed to a Teamster cleanup committee Sheridan "pursued some investigation of the situation by reason of the appointment of this committee" (R. 32a-34a).

Walter J. Sheridan testified that the Committee counsel in late August of 1958 had instructed him to go into Ohio and attempt to establish whether there was an association between George Bender and the Teamsters and the degree of that association. Sheridan came to Ohio in late August of 1958 and pursued those instructions (R. 60a-62a).

The development of the Government's case against the petitioner clearly indicated that Walter Sheridan did not come to Ohio to investigate Joint Council 41, but to determine George Bender's relationship with teamsters in Ohio. It is also clearly indicated that Walter Sheridan was sent by the Committee counsel to get **information**, and both he and Senator McClellan testified to this fact (R. 45a, 101a). The testimony of both McClellan and Sheridan also disclosed that Sheridan did get the information for which he came to Ohio and that **information** was obtained by Sheridan on September 9, 1958.

Government's Exhibit 10 (R. 315a) are the notes that Walter Sheridan made concerning his visit to the office of Joint Council 41 on September 9, 1958. Of the many files that were available to Mr. Sheridan, these were the only notes he made of any document or file (R. 69a). The reason Mr. Sheridan gave for making those notes was that he was investigating George Bender (R. 99a).

There are two factors which amplify the fact that Walter Sheridan, as an investigator, was interested in any information he might obtain concerning George Bender, rather than the fact that the documents purportedly required to be produced were the subject under inquiry by the Committee and that the proper names on those documents were pertinent or relevant to that inquiry.

First, the evidence produced by the Government over Petitioner's objection of the retention of George Bender by the Ohio Conference of Teamsters in 1958 clearly verifies Sheridan's interest in George Bender. Second, the testimony of Sheridan as to his knowledge of the establishment of the field office in Cleveland for the local production of documents purportedly required to be produced by the subpoena (R. 25a, 59a, 86a) 'indicates clearly that Sheridan was not aware what, if any, documents had not been produced by Joint Council 41.

The most conclusive proof that the proper names listed on the documents allegedly mutilated and withheld was the testimony of Senator McClellan.

During the course of the trial the Government's attorney questioned Senator McClellan about the specific "findings" of the Committee with respect to certain officers of the Teamsters Union whose names appeared upon the Deutsch invoice. After objection by the Petitioner the trial court questioned Senator McClellan concerning the Committee's interest in one officer of the union sending another officer of the union a Christmas gift. Senator McClelland stated to the court that it was not a question of one officer sending another officer a Christmas gift, but was a question of using union dues for such purposes (R. 43a).

The Court of Appeals in the 4th paragraph of its opinion, (R. 406), evaluates Senator McClellan's testimony in this regard as follows:

> "As Senator McClellan testified, the question was not whether an officer of the Union sent a champagne bucket to another officer, but 'it is a question of using Union dues money for such purpose'—and the use of Union dues money was one of the questions the Committee was investigating. * * * We accept this evidence as true on this appeal from a verdict and judgment in favor of the government."

If the testimony of Senator McClellan referred to above and quoted by the Court of Appeals is the true evidence against the Petitioner, it should be abundantly clear that the Petitioner did not and could not have obstructed or impeded the investigation of the question under inquiry by the Committee. Sheridan at all times had the Deutsch invoice which contained the information which Senator McClellan stated interested the Committee (R. 72a; Gov. Ex. 12; R. 316a).

Sheridan had made notes of the proper names claimed to have been on the Deutsch invoice which Senator McClellan testified was not of interest to the Committee (R. 43a).

The testimony of Sheridan and McClellan and the opinion of the Court of Appeals clearly indicate that the Petitioner did not obstruct or impede the Committee in the due and proper exercise of its power of inquiry.

It is not discernible from the Government's evidence what subject the Committee had under inquiry on September 9, 1958, and under any view of the Government's evidence it cannot be said that the Petitioner obstructed or impeded any due and proper exercise of investigative power by the **Committee.** To obstruct or to impede is to hinder or prevent progress toward a goal or an achievement. Sheridan had fulfilled the purpose for which the Committee counsel instructed him to travel to Ohio late August of 1958, and no act of the Petitioner, or any other person, could have, at the time that Sheridan made the notes contained in Government's Exhibit 10, impeded or obstructed the achievement of Mr. Sheridan's goal.

The record of the events of the Committee with respect to the independent actions of Walter J. Sheridan fully disclose those factors that the Supreme Court found barren in the record of *Barenblatt v. United States,* 360 U. S. 109 at 134 (1959).

IV.

As the trial progressed, what had been characterized by the Government's attorney as a simple case became rather complex by the various attempts to justify the admission of evidence which, as the petitioner had contended, was erroneously admitted and prejudicial to the Petitioner. During the Government's attorney's final argument repeated references were made to "criminals," "racketeers," "unsavory characters" and "persons of bad reputation."

With the repeated references to "criminals," "racketeers," "unsavory characters" and "persons of bad reputation" throughout the trial as a background, the misstatements of the evidence by the Government's trial attorney in his final argument had a telling effect upon the jury, the trial court and the Court of Appeals.

The Court of Appeals, in its opinion, Appendix, *infra*, page 34, has singled out the trial court's observation concerning the impact of the Government's proof of telephone calls from Hoffa in Washington to Presser in Cleveland, and the further proof of the Petitioner seeking information "as to whether he could secure the duplicate invoices in question at a time when the original invoice had just been mutilated."

Regarding the telephone calls: The Petitioner did not at any time attempt to establish a defensive alibi. The Petitioner took the stand and candidly and honestly recounted the circumstances of Sheridan's visit to his office in September of 1958. He emphatically denied having consciously seen the documents in question at any time from 1955 until the time of trial, and denied that he mutilated either document or withheld them from Sheridan or the Committee (R. 232a).

If the documents were subject to demand by Sheridan through the subpoena referred to in the indictment, Sheridan had those documents in his possession on September 9, 1958.

Regarding the duplicate invoices: Charles S. Schaeffer testified:

> "**I called and asked** for information as to **whether he** (Mr. Feder, Deutsch Company) **had any bills or invoices** which were sold to the Teamsters Union or to Mr. Presser **and, if so, I would like to have duplicate copies of them.**"

The Government argued to the jury that Mr. Schaeffer was perhaps the Government's most important witness because it disclosed that "Presser asked Schaeffer to attempt to get him the other copies pertaining to this gift" (R. 341, 342). When Petitioner's counsel called the misconduct of the Government's trial attorney to the attention of the trial court concerning this "most important witness of the Government," the trial court was so impressed with the Government's argument that he stated (R. 327a):

> "My impression of the cogent evidence which very likely influenced the jury was the defendant's testimony . . . To a like effect is the clear implication in Salesman Charles Schaeffer's testimony that the defendant, in September, 1958, was interested in securing the duplicate copy of the torn invoice. (Defendant's brief does not set out fully Schaeffer's testimony about trying to secure the duplicate invoice for Presser, see pages 381 and 382 of the typewritten transcript.)"

If the trial court and the Court of Appeals were so impressed with the misstatements of the evidence by the Government's attorney in his final argument, certainly the influence the misstatements had upon the jury were equally as great as the trial court and the Court of Appeals have observed.

V.

To prove the charges made against the Petitioner the Government relied upon circumstantial evidence (R. 302a, 303a), and that evidence cannot support the conviction of guilty.

Following the service of the subpoena duces tecum demanding nine years of records of Joint Council 41 (Gov. Ex. 9, which the Petitioner contends was a nullity), the demanded documents were turned over to an employee of the Committee at the Cleveland Field Office (R. 86a). When these documents were turned over to the Committee's Field Office Paul T. Riebesell receipted for the documents (R. 146a, 147a). However, several Government agencies or departments demanded the same documents over the same period of time (R. 146a). Both Senator McClellan (R. 25a) and Walter Sheridan (R. 86a) knew of this practice.

At the time Sheridan went to the office of Joint Council 41 on September 9, 1958 and on September 13, 1958, there was in the custody of the Committee's field office personnel the cash disbursement book of Joint Council 41 for 1955 (Gov. Ex. 23; R. 137a) and the cancelled checks with stubs of Joint Council 41 for November and December of 1955 (Gov. Ex. 24; R. 137a).

Line 7 of Government's Exhibit 23 under date of December 29, 1955, was the entry "A. R. Deutsch, $824." (R. 175a) and a reference to check "82-8302" (R. 175a).

Government's Exhibit 24 contained Check No. 8302 and the stub to that check had the notation "Rudolph Deutsch for $824 for Christmas gifts" (R. 176a).

Despite the fact that Sheridan knew of the arrangement in existence between Joint Council 41 and Field Office (R. 86a); knew that the Field Office gave receipts for documents it received (R. 96a); and knew many receipts for Joint Council 41 were in the Field Office files (R. 96a); Sheridan did not examine any of the documents in the Field Office. Particularly, Sheridan knew nothing about Government's Exhibits 23 and 24 "on or about and between September 9, 1958 and September 13, 1958" (R. 94a).

Although Sheridan made notes (Gov. Ex. 10; R. 315a) of "all of the details" that appeared on the original of the

Deutsch invoice (Gov. Ex. 9; R. 314a) he could not recall the appearance of "this second piece of paper" (R. 68a).

Petitioner's secretary was called as a witness by the Government and testified that the Petitioner was out of town following Sheridan's visit to the office of Joint Council 41 on September 9, and the date of the Petitioner's absence was the "10th or 11th" (R. 181a). Petitioner's secretary also testified that in Petitioner's absence from his office a great number of people had access to it for their business (R. 165a).

If the Petitioner is presumed innocent of the charges in the indictment and if the presumption remains with the Petitioner until that presumption of innocence is overcome by **substantial** and **affirmative** evidence, the Government failed to exclude every other hypothesis except that of the guilt of the Petitioner.

CONCLUSION.

It must follow from the Government's failure to prove by competent evidence the Petitioner's guilt with respect to any element of the offense charged in the indictment that the Petitioner is entitled to have the subpoena duces tecum quashed, the indictment dismissed and judgment of acquittal entered on his behalf.

Respectfully submitted,
Edwin Knachel,
John G. Cardinal,
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Counsel for Petitioner.

Supreme Court, U.S.
FILED
MAR [illegible] 1962
JOHN F. DAVIS, CLERK

No. [illegible] 25

In the Supreme Court of the United States

October Term, 1961

[illegible], Petitioner,

v.

United States of America

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE [illegible] CIRCUIT

BRIEF FOR THE UNITED STATES

ARCHIBALD COX,
Solicitor General,
[illegible],
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In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 278

WILLIAM PRESSER, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the court of appeals (R. 404–408) is reported at 292 F. 2d 171. The opinion of the district court (R. 326–328), incident to its denial of a renewed motion for judgment of acquittal or in the alternative for a new trial, is not reported.

JURISDICTION

The judgment of the court of appeals was entered on July 6, 1961 (R. 408). The petition for a writ of certiorari was filed on August 1, 1961, and was granted on October 23, 1961 (R. 409; 368 U.S. 886). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

Petitioner was convicted of corruptly obstructing and endeavoring to obstruct an inquiry by a Senate committee in that he mutilated an invoice and concealed a memorandum which the committee had subpoenaed from a labor organization and which a committee investigator had preliminarily examined at the union offices. The following questions are presented:

1. Whether the likelihood that the subpoena directed to the labor organization for these records had been filled in by an investigator employed by the committee, over the signature of the committee chairman, immunizes petitioner from prosecution.

2. Whether the records were subpoenaed and sought for a legitimate legislative purpose, and, if so, whether the prior examination of the documents and the recording of some of their contents by an investigator for the committee bars the prosecution.

3. Whether the evidence was sufficient to support the conviction.

4. Whether petitioner was denied a fair trial by the admission of testimony by the chairman of the committee.

5. Whether the summation of the prosecutor was fair.

STATUTE AND RESOLUTION INVOLVED

Section 1505 of Title 18, U.S.C., the Act of January 13, 1940, 54 Stat. 13, as amended, provides:

> Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any witness in any proceeding pending before

any department or agency of the United States, or in connection with any inquiry or investigation being had by either House, or any committee of either House, or any joint committee of the Congress; or

Whoever injures any party or witness in his person or property on account of his attending or having attended such proceeding, inquiry, or investigation, or on account of his testifying or having testified to any matter pending therein, or;

Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede the due and proper administration of the law under which such proceeding is being had before such department or agency of the United States, or the due and proper exercise of the power of inquiry under which such inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress—

Shall be fined not more than $5,000 or imprisoned not more than five years, or both.

Senate Resolution 74, 85th Congress, agreed to January 30, 1957 (103 Cong. Rec. 1264–1265; Govt. Ex. 5-C, R. 312–313), provided in pertinent part:

Resolved, That there is hereby established a select committee which is authorized and directed to conduct an investigation and study of the extent to which criminal or other improper practices or activities are, or have been, engaged in the field of labor-management relations or in groups or organizations of employees or employers to the detriment of the interests of the public, employers or employees, and to determine whether any changes are required in the laws of the United States in order to protect such interests against the occurrence of such practices or activities.

* * * * *

SEC. 4. For the purposes of this resolution the select committee is authorized as it may deem necessary and appropriate to (1) make such expenditures from the contingent fund of the Senate; (2) hold such hearings; (3) sit and act at such times and places during the sessions, recesses, and adjournment periods of the Senate; (4) require by subpoena or otherwise the attendance of such witnesses and production of such correspondence, books, papers, and documents; (5) administer such oaths; (6) take such testimony, either orally or by deposition; (7) employ on a temporary basis such technical, clerical, and other assistants and consultants, ~~and~~ (8) with the prior consent of the executive department or agency concerned and the Committee on Rules and Administration, employ on a reimbursable basis such executive branch personnel as it deems advisable; and further with the consent of other committees or subcommittees, to work in conjunction with and utilize their staffs, as shall be deemed necessary and appropriate in the judgment of the chairman of the select committee.

* * * * *

STATEMENT

On March 23, 1960, an indictment was returned in the United States District Court for the Northern

District of Ohio charging that petitioner, the president of Joint Council No. 41 of the International Brotherhood of Teamsters, obstructed and endeavored to obstruct the due and proper exercise of the power of inquiry of a Senate committee. The indictment alleged that the Senate Select Committee on Improper Activities in the Labor or Management Field was conducting an investigation and study of the extent of criminal or other improper activities in those areas and that, between September 9 and September 13, 1958, petitioner had mutilated a certain invoice and had concealed and withheld from the committee an envelope bearing the notation "Christmas List" and a memorandum containing a list of names with various items of merchandise or amounts of money written next to them, knowing that these records belonged to the Council, that these records were relevant to the subject matter of the committee's inquiry, and that the production of these records had been required by virtue of a subpoena served on the Council on March 21, 1958 (R. 5–7). After a jury trial, petitioner was found guilty and was sentenced to eight months imprisonment (R. 330).

A. THE COMMITTEE'S INVESTIGATION

The Senate Select Committee on Improper Activities in the Labor or Management Field was directed by its authorizing resolution of January 30, 1957 (Exhibit 5-C: R. 18, 312–313; S. Res. 74, 85th Cong., *supra*, pp. 3–4) "to conduct an investigation and study of the extent to which criminal or other improper practices or activities are, or have been engaged in in the field of labor-management relations or in groups or organizations of employees or employers to the detriment of the interests of the public, employers or employees and to determine whether any changes are required in the laws of the United States in order to protect such interests against the occurrence of such practices or activities." The committee was authorized to require "by subpoena or otherwise" the production of documents and to employ personnel to assist it (R. 312).[1] The committee adopted a rule directing that subpoenas should be issued by its chairman (Exhibit 6; R. 313).

After its organization, the committee employed a staff which included a chief counsel and professional investigators. In performing its legislative function, the committee issued subpoenas and examined records which it thought might be pertinent. Under the direction and supervision of the chief counsel, the investigators were given the task of interviewing prospective witnesses, arranging to obtain subpoenaed documents, and examining documents that might be of interest to the committee. The committee also established field offices in different sections of the country, including Cleveland, where its staff examined records locally as a convenience to all parties concerned (R. 20–25, 28). The investigators, upon their return to Washington, wrote reports to the committee, based upon their work, which covered the information obtained (R. 90).

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[1] The life of this committee was continued by resolution beyond the date of the specific acts alleged in the indictment. Its initial extension was by Senate Resolution 221, 85th Cong., 2d Sess. (Exhibit 5–A, R. 309–310).

The investigation by the committee and its staff covered possible misuse and misappropriation of union funds improperly to influence public officials and to enrich union officials, and also the possible domination of unions by persons outside of the labor movement (R. 20-21). Among the subjects of inquiry was the possible association of Teamsters Union officials with reputed racketeers (R. 44).

On March 24, 1958, the committee filed an interim report containing special findings with regard to the Teamsters Union, and recommending, in very general terms, legislation to regulate and control union funds and to insure union democracy (R. 25-27; 388-403).[2]

During 1958, the committee conducted investigations of various locals and affiliates of the Teamsters Union in Ohio and, in connection with its investigation, issued subpoenas for the production of records of labor organizations (R. 28-29). On March 21, 1958, a committee subpoena, directed to Joint Council No. 41, International Brotherhood of Teamsters, was served on petitioner personally (R. 57-58). This subpoena (Exhibit 9) ordered the Joint Council to appear before the committee at Room 101, Senate Office Building, Washington, D.C., and produce certain records from January 1, 1949 to January 1, 1958. It specified, *inter alia,* the cash disbursement book, cancelled checks, check stubs, paid bills, memoranda and any other records relating to the Joint Council (R.

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[2] S. Rep. No. 1417, 85th Cong., 2d Sess. (1958). This report, Exhibit 7, was not permitted to go into the jury room and was not examined by the jury (R. 212-213).

314).[3] On April 1, 1958, a second subpoena was served upon the Joint Council calling for the production of records, noting that "[p]roduction of records in Washington, D.C., [would] be waived" if the records were made available in Cleveland, Ohio[4] (R. 88–89, 103–104). Both subpoenas were signed by Senator McClellan, the chairman of the committee. The March subpoena had in all likelihood been signed in blank by Senator McClellan, and had been filled in by the committee investigators (R. 83–84, 89). The committee and the union agreed that records subpoenaed would be turned over to a committee office in Cleveland (R. 58–59, 86, 147). Pursuant to this arrangement, records were produced but some records demanded by the subpoenas, such as the correspondence files and memoranda of Joint Council No. 41, were not turned over to the committee (R. 63).

In August 1958, while the committee investigation in Ohio was in progress, the committee became interested in the relationship between the Teamsters Union and former Senator George Bender, the head of a so-called anti-racketeering commission which had been established by the Teamsters to investigate corruption and improper practices of its own officials.

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[3] Its date of issuance was listed as March 19, 1957, instead of March 19, 1958, because of a typographical error (R. 102, 105).

[4] The April subpoena (Exhibit A) called for the production of all records from January 1, 1949 to date, specifying the same category of records as the March subpoena. In lieu of the language "relating to Joint Council No. 41," it substituted "relating to Joint Council No. 41 Welfare Records, Building Association Records, Special Fund Records and the Teamsters Year Book" (R. 318).

The committee had information indicating a past association between former Senator Bender and the Teamsters (R. 62). A committee investigator, Walter J. Sheridan, who had served the March subpoena upon petitioner and had visited Ohio from time to time in connection with the Teamster investigation (R. 56–57, 90), was instructed to a make a study of this relationship (R. 34, 60–62).

Much of this testimony concerning the working of the committee was developed through the testimony of its chairman, Senator McClellan. The details of his testimony and the objections thereto are discussed in our Argument, *infra*, pp. 36–43.

B. THE MUTILATION AND CONCEALMENT OF THE RECORDS

On September 9, 1958, Mr. Sheridan, who had examined some of the records in the field office and who knew that some of the subpoenaed records had not been produced (R. 93–94), went to the offices of Joint Council 41 and asked to see the correspondence files and memoranda which had not been produced. Petitioner permitted him to examine these files which were located in a file cabinet in his secretary's office. Sheridan found an envelope marked "Xmas List." containing a Rudolph Deutsch Company invoice showing the purchase by the Council in December 1955 of eight champagne buckets at $100 each, for eight individuals listed as Bender, Beck, English, Hoffa, Brennan, Connell, Bliss and Dorfman. He also examined a yellow sheet of paper listing the eight names found on the voucher and additional names, together with amounts of money or indications of Christmas gifts next to the names. Sheridan made notes (Exhibit 10) of the invoice and obtained the first initial of Bender and Bliss from the yellow memorandum (R. 63–64, 66, 68–69, 156–157, 315). He told petitioner that he would like to take four files with him, one of which contained the invoice and the yellow paper, but consented to leave the files in petitioner's possession for photostating (R. 63, 70, 171).

About September 11, 1958, petitioner, who had purchased the champagne buckets, contacted Charles Schaeffer, the salesman who had made the sale, and asked him if he "had any records of anything that had been sold to him or the Teamsters Union in the form of gifts," making particular reference to the champagne buckets. After telephoning the Deutsch Company, the salesman notified petitioner that there were no such records available (R. 208–209, 121).[5]

On September 13, 1958, when Sheridan returned for the four files, petitioner obtained them from his own office and handed them to Sheridan, stating that he had not touched them. Sheridan, noting that the invoice had been torn, and that the envelope and the memorandum containing the names of the donees were missing, told petitioner that he (Sheridan) should not have trusted him (petitioner). Petitioner responded, "You have your job to do, I have mine" (R. 71–73, 96–97). The invoice also contained alterations which had been made by an erasure (R. 133).

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[5] On September 13, 1958, after leaving petitioner's office, Mr. Sheridan visited the seller of the buckets. The salesman had telephoned the company one or two days prior to this visit (R. 75, 100, 121, 209).

All persons who had access to the files denied that they had tampered with the records (R. 173–174, 192, 194).[6]

C. THE DEFENSE

Except for six character witnesses (R. 271–285), petitioner was the only defense witness. He admitted the visits by Sheridan (R. 225–232) but he denied that he had mutilated the invoice or removed anything from the files (R. 225, 232). He testified that he had traveled to Washington between Sheridan's two visits, leaving on September 9 a few minutes after Sheridan's departure and returning on the 12th, and that while in Washington he had seen James R. Hoffa (R. 229, 237–244).

Petitioner acknowledged knowing that the committee investigation could affect the Teamsters and conceded that he was generally interested in the committee findings (R. 254–255). He had heard and had read in the newspaper that the committee had made reports to the Senate and had made some special findings with respect to the Teamsters (R. 255–256). He had also read the committee statements concerning Dave Beck, James R. Hoffa and Bert Brennan in the newspapers (R. 257–258). He had general knowledge of the court proceedings involving the establishment of the Board of Monitors to oversee the Teamsters (R. 258). He had made a statement that the Monitors intended to eliminate any Teamsters official associated with anyone with a bad reputation and that the Monitors might be after his job (R. 258–262). Petitioner also knew of and was interested in the "cleanup commission" headed by former Senator Bender, and was aware of the committee investigation involving the relationship between Senator Bender and the Teamsters organization (R. 263–265).

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[6] In August 1958, the Ohio Conference of Teamsters, headed by petitioner, had retained Senator Bender and sent him a check for $1,000 signed by petitioner (R. 199–200). When Senator Bender was appointed chairman of the "clean-up commission" of the Teamsters International Union, he returned the check, explaining in a letter that this position might create a conflict of interests (R. 201–202). On September 9, 1958, petitioner forwarded this letter to the secretary-treasurer of the conference (R. 202).

D. THE REBUTTAL

The government introduced telephone company records which reflected that, on September 11, 1958, two long distance person-to-person phone calls had been made by James R. Hoffa, in Washington, D.C., to petitioner in Cleveland (R. 286–287).

E. THE INSTRUCTIONS

The prosecution requested the judge to tell the jury as a matter of law (1) that the committee was pursuing a legitimate legislative purpose in inquiring into improper activities in the labor-management field, and (2) that the invoice and separate list of names were documents which bore a reasonable relation to the subject matter of the committee's inquiry and were relevant to it. Although petitioner requested the court to instruct the jury on several subjects "as a matter of law," he offered no suggestion on the relevancy issues (R. 386–387).

The court accepted the first part of the government request but deemed the second part to be a fact issue and instructed the jury accordingly (R. 294, 303, 304, 326–327). The court instructed the jury on this issue as follows (in part):

> Congress is within its powers and was within its powers and function to conduct inquiries and investigations into subjects upon which it is empowered by the Constitution to legislate. It was acting within the scope of its powers in conducting an inquiry in respect of unlawful activities in labor-management relations. However, its inquiries are required to have a reasonable relation to the subject of the inquiry, and the evidence should be relevant to the subject and purpose of such inquiry and investigation [R. 294].
>
> * * * * *
>
> It will be for you to say from the evidence on the subject whether the sending of the gifts by the Joint Council 41 to public officials, political leaders and other controversial persons of supposed influence, or questionable reputation, such as done by Joint Council 41 through the defendant, its President, was a type of practice relevant to the inquiry and investigation being conducted by the Committee under the Senate Resolution; whether the defendant, with knowledge of the function and purpose of the Committee, and of the relevancy of the names of the recipients of the gifts admitted to have been ordered and paid for by his Union, defaced the Deutsch invoice by tearing off a portion containing the names of the recipients, and withheld the names of the Christmas List with the corrupt and unlawful intent and purpose of obstructing and imped-

ing the Committee's inquiry. That the Committee might have secured these names and other information relative to the gifts by other means is not material and would not furnish absolution to defendant if you find that he did what the indictment charges.

> If you believe from the direct and circumstantial evidence, beyond a reasonable doubt, that defendant did deface, tear, or withhold the records referred to and if you believe that he did, and did it with knowledge that they were relevant to the inquiry being conducted by the Committee of Congress and subpoenaed for that purpose, and that they were defaced or withdrawn by him wilfully and with the purpose corruptly to obstruct and impede the Committee from obtaining the information contained in the records, the defendant would be guilty of the offense charged. If you do not so find he would be entitled to acquittal [R. 304].

When counsel for petitioner was asked for exceptions to the court's charge, he announced he had "Nothing" (R. 307).

SUMMARY OF ARGUMENT

I

The proof showed that petitioner deliberately destroyed union records with knowledge that the records were sought by a Senate committee and were pertinent to its inquiry.

A. The validity of the subpoena directed to the union is irrelevant to this case. The statute, 18 U.S.C. 1505, proscribes any endeavor to obstruct a committee inquiry. It is not limited to an interference with records demanded under compulsory process but covers records sought voluntarily without such process. It is sufficient to constitute an offense that petitioner destroyed the records with knowledge that the specific records had been requested by an authorized agent of the committee for examination by the committee.

Moreover, the records were under legal subpoena at the time petitioner committed his corrupt acts. The likelihood that a committee investigator filled in a subpoena signed in blank does not invalidate the process if the investigator's action was ratified by the committee and acquiesced in by the union prior to the time particular records were demanded. In the present case the union and the committee agreed, subsequent to the initial issuance of the subpoena and prior to the investigator's specific request for the records now in issue, that these records would be produced before a field office established by the committee. At the very minimum, this arrangement establishes ratification by the committee and acceptance by the union. Even aside from the matter of ratification and acceptance of the subpoena, the subpoena was in an important sense the process of the committee, for it called for production of designated union records before the committee in Washington and not before the investigator. The fact that the subpoena may have been filled out by the investigator could not, therefore, result in denying the union the important right to contest the validity of the subpoena before the committee.

B. The custodian of records has no right to determine what documents demanded by a congressional committee he will preserve for congressional scrutiny. Since the statute embraces any endeavor, successful or otherwise, to block a committee's inquiry, it is no defense that the records were destroyed after a committee investigator had noted some of the information contained in the records. The committee was not obliged to rely upon secondary testimony when the original documents were available. Moreover, this conviction does not rest merely upon the mutilation of records already noted by a committee employee, but upon the concealment of a paper, the contents of which the committee was unable to obtain.

C. The records were sought for a legitimate legislative purpose. The committee was duly conducting an inquiry into the misuse of union funds improperly to influence public officials and to enrich union officers. Evidence of payments or gifts to public officials or union officers was relevant to this inquiry. The committee could not be limited to examining documents which merely showed that gifts were made without designating the recipients; it was entitled to probe the relationship between the union and the recipients. Furthermore, the names were relevant to whether the Teamsters were making a good faith effort "to clean house" or whether legislation was the only answer to the misuse of union funds.

D. The jury was properly allowed to resolve petitioner's guilt on ample direct and circumstantial evidence. Circumstantial evidence, like direct evidence, may support a guilty verdict if it justifies a jury in finding guilt beyond a reasonable doubt.

II

A. There was no error in taking the testimony of Senator McClellan before the jury. The trial judge believed that a particular issue of pertinency—whether the sending of gifts by the union was relevant to the committee's inquiry—was a jury question. Petitioner never objected to this procedure and never suggested that pertinency was solely a question upon which only the court should act. There was nothing in the testimony of Senator McClellan that would have confused the jury or biased them in deciding the contested factual issue—whether petitioner destroyed and concealed records. Moreover, in the absence of objection, the trial court has discretion in not excluding the jury even when hearing evidence on an issue entirely for the court's determination.

B. In any event, even if the judge alone had heard the evidence on and decided the issue of pertinency, it would have been necessary to present to the jury most of the facts developed in the Senator's testimony, including the part about which petitioner most complains. Since the government was required to prove to the jury that an inquiry was in progress and that petitioner had notice of such investigation, the jury had to be informed, either by evidence or by peremptory instruction, of the nature of the inquiry. Beyond this, the major portion of Senator McClellan's testimony was properly presented to the jury to show petitioner's motive. It was relevant on this issue to prove that, to petitioner's knowledge, the committee was trying to ascertain whether the union was using its funds to purchase expensive Christmas gifts and whether Senator Bender had a prior relationship with the Teamsters. The first step in proving this knowledge was to establish that these were the aims of the inquiry. In addition, Senator McClellan's testimony as to the public acts of the committee itself tended to prove petitioner's knowledge and motive. The jury could infer that, in the six-month interval between the time that the subpoena had been served upon petitioner and the investigator's second visit (or at the least, between the investigator's two visits), the petitioner, as the head of a union under investigation, acquainted himself with the subject matter of interest to the committee. While petitioner in his own testimony did not deny that he had such knowledge, the government could not know this when it was presenting its affirmative case.

C. An examination of the specific testimony of the Senator likewise shows that it was properly before the jury, both as to pertinency and as to motive:

1. Both to establish a possible motive for petitioner to destroy or conceal union records and to prove the pertinency of the records sought, it was necessary to show that the committee was empowered to investigate the use of union funds for improper purposes. The general Senate resolution authorizing an investigation of criminal and other improper activities by unions was not the only evidence admissible on these

issues. The government was entitled to prove by testimony of persons familiar with its investigations, such as the committee chairman, the specific scope of the inquiry and to indicate that, by the filing of an interim report of the committee, Congress and the public were made aware of the nature of the inquiry.

2. Sheridan's testimony before the committee was not admitted to bolster his subsequent testimony at the trial. Rather, it was relevant to prove that Sheridan, in requesting the documents, was acting for the committee and that the information sought had a reasonable relationship to the matter under investigation.

3. The identity of the recipients of gifts was not offered to assail petitioner's character. It was introduced because it was relevant on the issue of pertinency and on petitioner's motive to destroy the papers. Contrary to petitioner's assertions, only one recipient was described as a person of bad repute.

4. Testimony of Senator McClellan that destruction and concealment of the records would have hampered the committee was not prejudicial because this testimony bore only on pertinency, an issue which was proved by overwhelming evidence.

III

The prosecutor's closing argument was not inflammatory. It was based upon proper inferences from the evidence. Moreover, petitioner made no objection to the summation.

ARGUMENT

I

THE EVIDENCE SUPPORTS PETITIONER'S CONVICTION FOR CORRUPTLY OBSTRUCTING A SENATE INQUIRY

Introduction

Section 1505 of Title 18 U.S.C. provides in relevant part that "[w]hoever corruptly * * * obstructs, or impedes, or endeavors to * * * obstruct, or impede * * * the due and proper exercise of the power of inquiry under which such inquiry or investigation is being had by * * * any committee of either House * * * Shall be fined not more than $5,000 or imprisoned not more than five years, or both." There are thus three necessary elements of the offense:

1. *A Congressional committee must be conducting a duly authorized inquiry or investigation.* This element, which is hardly contested, is plain beyond dispute in the present case.

2. *The defendant must have obstructed or impeded or must have endeavored to obstruct or impede the proper exercise of the committee's power of investigation.* We submit that actual obstruction was established by proof that (a) the petitioner intentionally destroyed and concealed documents which were highly relevant to the committee investigation; and (b) the loss of these documents both deprived the committee of relevant information it would otherwise have had and prevented the committee from having the best available evidence of that part of the information which it later obtained from other sources. An endeavor to obstruct or impede the committee's power of investigation was established by proof that

the petitioner intentionally destroyed and concealed documents which he knew[7] had been sought by the committee both through the use of a subpoena (whether valid or defective) and through the personal request of an authorized committee investigator.

3. *The defendant must have acted with corrupt or guilty knowledge or intent that his action will obstruct the committee investigation.* This element of the offense was fully established by proof that the petitioner concealed and destroyed records which bore relevantly on what he knew to be the subject of the committee investigation, which were the subject of a committee subpoena the validity of which he never challenged, which had been requested by a committee investigator, and which he knew he had been permitted to keep, only temporarily, for the purpose of having the records photostated.

Thus each of the explicit elements of the crime was established by substantial evidence at petitioner's trial. In addition both parties assumed that a fourth necessary element of the crime was that the defendant's obstruction or attempted obstruction must have involved records which were in fact pertinent to the committee investigation. This too was completely established by the proof at trial. See *infra*, pp. 31-33. On the basis of the government's proof the jury found that petitioner deliberately destroyed and concealed union records which he knew were relevant to a subject properly under inquiry by the Senate Select Committee on Improper Activities in the Labor or Management Field. None of petitioner's contentions affords any excuse for the wilful obstruction shown in this case.

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[7] For purposes of the present case we shall continue to treat the pertinency of the documents as a separate and necessary element of the crime whether or not actual pertinency, as opposed to a reasonable basis for the committee to believe the documents pertinent, is a necessary element of a prosecution under 18 U.S.C. 1505.

A. *A defect in the subpoena directed to the union would afford no defense to the petitioner. In any event, the records were under valid subpoena at the time petitioner did his corrupt acts.*

Petitioner argues that, although he had agreed, as president of the union, to turn the records over to the committee after an investigator had made a preliminary examination, his act of destroying or concealing the records, so that the committee could never get them at any time, may be excused on the ground that the original subpoena was invalid. The short answer is that no defect in the subpoena would excuse petitioner's deliberate destruction of the records. Furthermore, the subpoena was valid.

1. The obstruction statute is not limited to an interference with records sought under compulsory process; it covers records produced or displayed without such process. If a committee investigation is in process and records are destroyed or concealed with knowledge that they have been labeled for examination by the committee, the statute is violated. The committee's power of inquiry is not dependent upon compulsory process. A committee can both employ

the subpoena process and depend upon voluntary cooperation of witnesses and prospective witnesses. It can employ a staff of investigators to assist it in its labors. Indeed, in the instant case, the committee was specifically granted authority by its authorizing resolution to require by "subpoena or otherwise" the attendance of witnesses and the production of documents. See *supra*, pp. 4, 6.

It is clear that the statute involved, 18 U.S.C. 1505, is intended to and does apply to interference with a committee's attempt to obtain relevant material although no valid subpoena is outstanding. As enacted in 1940, the statute made applicable to congressional investigations and administrative proceedings the protection long afforded to judicial proceedings by the statute popularly known as the obstruction of justice statute, 18 U.S.C. 1503. The purpose of these companion obstruction statutes is not only to protect witnesses and parties but to prevent affirmative action which corruptly interferes and endeavors to interfere with investigations of Congress and proceedings before courts or agencies. *United States* v. *Russell*, 255 U.S. 138; see also *Samples* v. *United States*, 121 F. 2d 263, 265-266 (C.A. 5). In cases arising under the related

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[8] See H. Rept. 1143, 76th Cong., 1st Sess.; S. Rept. 1135, 76th Cong., 1st Sess. The two statutes were considered together in 1945, when their protection was extended to former witnesses. See S. Rept. 225, 79th Cong., 1st Sess.; H. Rept. 597, 79th Cong., 1st Sess. Section 1503 is a descendant of section 2 of the Act of March 2, 1831, 4 Stat. 488. See *Nye* v. *United States*, 313 U.S. 33, 44-46.

obstruction of justice statute involving tampering with witnesses, it has uniformly been held that an offense may be committed even though the acts of the defendant occur prior to the issuance or service of a subpoena, or, in the case of a voluntary witness, even though no subpoena is ever issued. *Broadbent* v. *United States*, 149 F. 2d 580, 582 (C.A. 10); *Samples* v. *United States*, 121 F. 2d 263, 266 (C.A. 5); *Odom* v. *United States*, 116 F. 2d 996, 998-999 (C.A. 5), reversed on other grounds, 313 U.S. 544;[9] *Heinze* v. *United States*, 181 Fed. 322, 324 (C.A. 2); *United States* v. *Solow*, 138 F. Supp. 812, 814-815 (S.D. N.Y.).

Petitioner's basic misconception stems from his attempt to argue the case as if it involved the obligation of the Joint Council to produce the records rather than the duty of petitioner not to interfere with the documents. The statute does not require that the documents mutilated or concealed be under subpoena. The statute is designed to protect witnesses and documents from all varieties of corrupt interference. See *Smith* v. *United States*, 274 Fed. 351, 353 (C.A. 8). Obviously, when one destroys records in which he knows a committee is interested, he impedes the inquiry, regardless of whether a subpoena has been issued or whether it is valid. If a subpoena has not been issued, it can be issued; if the subpoena is defective, the defect can be corrected.

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[9] This case was reversed on a confession of error by the Solicitor General on the ground that the instructions allowed a conviction on an objective rather than a subjective standard of knowledge. See Memorandum for the United States, No. 827, O.T. 1940.

But once the records are destroyed, they are beyond the reach of the committee forever, no matter how valid the process.

The point can be simply illustrated. A Congressional committee could, if it chose, adopt the practice of first asking the custodian of desired records to turn them over voluntarily and of issuing a subpoena only if the custodian refused. If a custodian who had been asked to turn over certain records refused to do so without a subpoena and then destroyed the records before a valid subpoena could be issued, he would be guilty of corruptly obstructing the processes of the committee. The situation in the present case differs from such a hypothetical situation only in ways that make petitioner's guilt more certain. Petitioner was aware that the committee was attempting to obtain the union invoice and memoranda in his possession. If he had refused to furnish these without being served with a valid subpoena, he would not have been free to destroy the documents before the committee could serve him with a valid subpoena. Petitioner's failure to object to the subpoena with which he had been served six months earlier can in no way result in his obtaining a right to obstruct the committee's investigation. Cf. *United States* v. *Bryan*, 339 U.S. 323, 332; *McPhaul* v. *United States*, 364 U.S. 372.

Petitioner's knowledge that the documents were wanted by the committee, and that his continued custody was temporary, was clearly established by the evidence. That is enough to render a destruction or concealment of the documents a violation of the statute, whether or not a valid subpoena had been issued.

2. In any event, the records were under valid subpoena at the time that petitioner destroyed them. It is true that there is no direct evidence that the committee issued the subpoena, except for the signature of Senator McClellan. However, the circumstances show that the subpoena was in fact that of the committee.

a. Since petitioner takes a rather narrow view of the facts bearing on this question, we recapitulate some of the relevant evidence. Senator McClellan testified that the committee undertook an investigation of various Teamsters unions in Ohio and issued subpoenas and employed investigators in connection with this inquiry (R. 28–29). On March 21, 1958, the Joint Council was served with a subpoena directing it to produce certain records before the committee in Washington (R. 57–58). Sheridan, a committee investigator, testified that in all likelihood this subpoena had been signed in blank by Senator McClellan, the committee chairman, and had been filled in by the committee investigators (R. 83–84, 89). After service of the subpoena, the union agreed with the committee to produce the subpoenaed records at the committee's field office in Cleveland (R. 58–59). The records involved in this case, although covered by the subpoena, were not produced (R. 93–94). On September 9, 1958, Sheridan visited the union office and was permitted by petitioner to examine subpoenaed records which had been turned over to the committee (R. 63). The committee investigators (whose employment was authorized by Congress) made frequent reports of their examinations to the committee (R. 80). Senator McClellan was aware of the fact that records were being produced for the committee through the Cleveland field office (R. 29).

b. The basis for petitioner's argument that the subpoena was invalid is Sheridan's testimony that the subpoena had in all likelihood been signed in blank by the committee chairman. But the evidence does not show that issuance of a subpoena to the Joint Council was not authorized by Senator McClellan. To the contrary, the evidence suggests there was such authorization, for Senator McClellan testified that he was aware of the fact that records were being produced for the committee through the Cleveland office (R. 29). Even more significantly, the evidence plainly indicates that the subpoena was ratified by the committee and any objections to it were waived by the union at a time prior to the destruction or concealment of the documents now in issue. Since the subpoena ordered the union to produce its records before the committee itself in Washington, and production of the documents elsewhere required the consent of the witness and the committee, the arrangement for production in Cleveland establishes (at the minimum) such ratification of the subpoena by the committee and acceptance of the subpoena by the union.

c. Even without the ratification we do not believe that the fact that the subpoena was signed in blank serves to render the subpoena invalid as not being the process of the committee. The subpoena called for production of records before the committee, not before the investigator who filled in the details of what was to be produced. Hence the person subpoenaed, in this case the union, had full opportunity to appear before the committee, the body authorized to issue subpoenas, to contest the validity of all or any part thereof. It was the committee, not the investigator, who would rule on the validity of any such objections. Thus in reality, as well as form, the subpoena was the process of the committee. The situation here is similar to that which pertains with respect to judicial subpoenas in the federal courts which are filled in by lawyers for the parties. Rule 17(a), F.R. Crim. P. Objections to the validity and scope of such subpoenas may be made to the court and are ruled upon by the court. The process is that of the court, disobedience to which is punishable as contempt, even though the court did not originally decide what documents should be subpoenaed. The important feature, if compulsory process is used, is that a witness have a right to contest the subpoena before a body having authority to rule. See *Fleming* v. *Mohawk Co.*, 331 U.S. 111 at page 123 (concurring opinion of Mr. Justice Jackson). That right existed with respect to the subpoena in this case. Petitioner's reliance on *Cudahy Packing Co.* v. *Holland*, 315 U.S. 357, is misplaced. The Court there held that, under the Fair Labor Standards Act, the Administrator of the Wage and Hour Division of the Department of Labor was not given statutory authority to delegate to subordinates his power to sign and issue subpoenas. In this case, no attempt was made to give the investigator power to issue subpoenas for production of records before the investigator. The subpoena, signed by the chairman, called for production of records before the committee. Thus, even if the investigator filled in the details, the process was that of the committee.

B. *The fact that an investigator had previously noted some of the information contained in the records does not show that petitioner did not obstruct or endeavor to obstruct the inquiry by destroying the records.*

1. Petitioner, who destroyed records which he knew the Senate committee wished produced after they had been left in his hands for photostating, argues that his act in preventing the records from getting to the committee did not block the inquiry because the investigator had noted some of the information before the act of destruction occurred. That an actual document available for study and presentation to other persons in the future, if necessary, is of more value to any investigative body than the recollection of its investigator, no matter how reliable, as to what that investigator has seen in his examination of documents seems to us so self-evident that we think the point hardly merits discussion. The fact that Sheridan had copied the names from the invoice does not excuse petitioner's act. The committee was not obliged to rely on secondary evidence, and to risk the potential disputes which might arise concerning the contents of the original documents, when the original document was available.

Furthermore, petitioner ignores the fact that part of the information sought by the committee was not obtained elsewhere. His conviction does not rest on the mutilation of the invoice alone. The memorandum containing a more inclusive list of gift recipients was concealed. It contained names additional to the ones which Sheridan had noted in his preliminary examination. The committee was not able to identify these names.

2. Petitioner clearly tried to frustrate the committee's investigation even if he did not succeed. The jury was justified in concluding that petitioner tried to prevent the committee from obtaining the names of the recipients of the champagne buckets only after ascertaining that such information could not be obtained elsewhere. See the Statement, *supra*, p. 10. The statute punishes not only a person who obstructs the inquiry, but any person who corruptly "endeavors to influence, obstruct, or impede * * * the due and proper exercise of the power of inquiry". It is therefore immaterial whether the inquiry is in fact obstructed or impeded. As this Court said in *United States* v. *Russell*, 255 U.S. 138, 143:

> * * * The word of the section is "endeavor," and by using it the section got rid of the technicalities which might be urged as besetting the word "attempt," and it describes any effort or essay to accomplish the evil purpose that the section was enacted to prevent. * * *

See also *Bosselman* v. *United States*, 239 Fed. 82, 86 (C.A. 2); *Thomas* v. *United States*, 15 F. 2d 958 (C.A. 8); *United States* v. *Polakoff*, 121 F. 2d 333 (C.A. 2); *Broadbent* v. *United States*, 149 F. 2d 580, 581 (C.A. 10); *Catrino* v. *United States*, 176 F. 2d 884

(C.A. 9); *Anderson* v. *United States*, 215 F. 2d 84 (C.A. 6); *United States* v. *Siegel*, 152 F. Supp. 370 (S.D.N.Y.), affirmed, 263 F. 2d 530 (C.A. 2), certiorari denied, 359 U.S. 1012.

C. *The evidence disclosed that the records were sought for a legitimate legislative purpose.*

Petitioner contends that the mutilation of the invoice and the concealment of the memorandum with its list of Christmas gift recipients involved documents which were not pertinent to any "question under inquiry" in that it was unnecessary for the committee to obtain the names of the individuals who had received the gifts. He asserts that the full legislative purpose was satisfied by union records which shewed the amount of money spent for Christmas gifts (Br. 11, 12, 39). The record shows, however, that the committee had a legitimate interest in the names.

1. While the statute does not specifically make pertinency an element of the offense, all parties have assumed for purposes of the present case that the effort to alter and conceal records to accomplish the proscribed purpose must involve documents which bear a reasonable relationship to the subject of the inquiry and were reasonably relevant to the inquiry.

2. The issue of pertinency can, as petitioner recognizes (Br. 23), be at least twofold: (1) the general question of the committee's powers to inquire into a certain subject matter and (2) the specific question whether the particular information sought is relevant to that subject matter. Both aspects of pertinency were amply met in this case.

Petitioner does not and cannot deny that the committee was pursuing its proper function in examining into the general field of improper activities in labor-management relations (R. 212–213). As an integral part of that investigation, the committee was duly conducting an inquiry into the misuse of unions funds improperly to influence public officials and to enrich union officials. This was amply disclosed by Senator McClellan's testimony (R. 20–21). The subpoena was issued, and the Cleveland field office established, to further this study.

Evidence of payments or gifts to public officials or union officials or others would obviously be relevant to this inquiry. Here the Deutsch invoice showed a gift to a United States Senator, to union officials and to others; the concealed memorandum showed gifts to others now unknown. Clearly the use of union funds, amassed from contributions of the members, to buy expensive Christmas gifts for public officials and labor leaders was a matter of legitimate interest to the committee. Congress was considering new labor legislation for years and had evinced increasing concern that union dues not be misused. See the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519.

3. Petitioner says that it was sufficient that the committee knew that gifts were made and that it was not entitled to the details of such gifts. But the legislature has a right to determine the various kinds of data that it deems necessary to collect. Congress did not have to bring its inquiry to a close because it had been furnished cancelled checks and a cash disburse-

ment book showing the total amount of money disbursed to the Deutsch Company. Congress had the legitimate right to seek the identity of the recipients of the champagne buckets and the identity of other donees of the Joint Council's beneficence. The identity of the names would serve to afford a reasonable basis for calling those listed, as witnesses, in order to probe their relationship with the union and its officials.

Even more specifically, as a phase of the overall investigation, the committee was justified in inquiring whether the Teamsters were making a good faith effort "to clean house" or whether some form of legislation was required. This was the immediate purpose of Sheridan's examination of the records. Petitioner had no right to attempt to frustrate either phase of the committee's inquiry.

D. The direct and circumstantial evidence was sufficient to prove petitioner's guilt.

Petitioner makes a general argument concerning the sufficiency of the evidence which hints that other people may have mutilated and concealed the documents involved. The jury resolved this question against him on ample evidence.

1. Sheridan gave direct testimony that, in examining certain files in petitioner's office on September 9, 1958, he noted the invoice with its list of eight names and examined the memorandum with its additional names. He related that when he returned on September 13, 1958, the invoice had been mutilated so as to remove the names and the memorandum was miss-

ing. When Sheridan said he should not have trusted petitioner, the reply that petitioner gave was that he had his job to do. All other persons who had an opportunity to do this deed testified that they had not done it. Petitioner's specific interest in this particular invoice is indicated by his call to the salesman (Schaeffer), as well as by the evidence of his motives for destroying the document. Finally, the jury was impressed, as were both courts below, by the documented contradiction of petitioner's testimony that he was absent from Cleveland between September 9 and 13. See the Statment, supra, pp. 11–12. The evidence of guilt fully supports the verdict.

2. Circumstantial evidence is in the same category as direct evidence. Circumstantial evidence may support a verdict of guilt even though it does not exclude every reasonable hypothesis of innocence. All that is required is that there be evidence which justifies a jury in finding guilt beyond a reasonable doubt. *Holland* v. *United States,* 348 U.S. 121, 139–140; *White* v. *United States,* 279 F. 2d 740 (C.A. 4), certiorari denied, 364 U.S. 850; *United States* v. *Young,* 291 F. 2d 389 (C.A. 6); *Sawyer* v. *United States,* 294 F. 2d 24 (C.A. 4), certiorari denied, 368 U.S. 916.

II

THE TESTIMONY OF SENATOR McCLELLAN WAS PROPERLY ADDUCED BEFORE THE JURY

Both the government and the defense tried this case on the theory that the government was required to prove "pertinency" of the documents as part of its case. The trial court was of the view that this issue of pertinency was for the jury. At the conclusion of the case the court determined as a matter of law that Congress was acting pursuant to a valid legislative purpose "in conducting an inquiry in respect of unlawful activities in labor-management relations" (R. 294). It submitted to the jury the question whether the sending of gifts to public officials and others was a type of practice which bore a reasonable relation to the inquiry being made, as well as the question of petitioner's knowledge of the inquiry (R. 303–304).

Petitioner did not object at the trial to the submission to the jury of the issue whether the sending of gifts was a type of practice which was relevant to the committee's inquiry. Nor did he object to the admission of Senator McClellan's testimony on the ground that it should have been heard by the trial judge out of the presence of the jury. Nevertheless, he now argues that the issue was for the court alone and that Senator McClellan's testimony as to the authority of the committee, its method of operation, and its interest in the operations of petitioner's union and the records sought should not have been adduced before the jury. It is the government's position that petitioner's acquiescence in permitting evidence of pertinency to be presented before the jury bars him from claiming error in that respect on review. Furthermore, it is our position that, even if the evidence of pertinency had been separately heard and determined by the court without a jury, the major portion of Senator McClellan's testimony could properly and necessarily would have had to be presented again before the jury as bearing on the motive of petitioner to destroy the records. Particularly since the evidence that petitioner destroyed the records was in part circumstantial, it was an important part of the government's case to show that petitioner had a reason to destroy them. The interest of the committee in the particular records destroyed, as they bore both on the misuse of union funds and on the relationship of Senator Bender to the Teamsters, was, if knowledge of that fact was brought home to petitioner, clearly relevant on the issue of motive. Evidence of the *committee's interest in the records thus* had to be adduced before the jury and the witness best qualified to adduce it was the chairman of the committee. We set forth below a fairly detailed summary of Senator McClellan's testimony before discussing petitioner's contentions with respect thereto.

A. SENATOR M'CLELLAN'S TESTIMONY

1. *The scope of the investigation*

Senator McClellan was the first witness at the trial (R. 16). He identified the authorizing resolutions and the committee rules, and these exhibits were admitted into evidence without objection (R. 18, 21). He read the content of the initial resolution over an objection that "these records speak for themselves" (R. 19–20). The following then ensued (R. 20):

> Q. Now in general, Senator, could you state some of the particular acts and practices which

your committee looked into pursuant to this Senate resolution?

* * * * *

Mr. Knachel [defense counsel]: My objection is that anything he says from now on in would be self-serving, your Honor.

The Court: No, they were public hearings, a matter of public record, what they investigated. How else could you establish what they did? I think it is within the realm of inquiry. You may answer.

Mr. Knachel: Exception.

Senator McClellan then related the general nature of the investigations which the committee had conducted (R. 20-21). He testified, over defense counsel's objection, that the committee did not limit itself to compulsory process to fulfill its function, and he detailed the duties of its counsel and investigators (R. 22-24). He gave, without further objection, the purpose of the field offices and stated that the committee had investigated the Teamsters Union, its officials, and other persons connected with that union (R. 25).

2. The interim report

The committee's interim report was identified (R. 25-26). See *supra*, p. 7. When defense counsel announced he wanted "to object to the admissibility of any part of this report", the court directed the government to call the witness' attention to the particular part desired to be offered. Senator McClellan then simply stated, over objection, that the report contained special findings with respect to the Teamsters Union and certain legislative recommendations, and the government limited its offer to those portions (R. 26). Senator McClellan summarized the legislative recommendations over a further objection (R. 27), and the government noted that the report had become a public record upon its filing in the Senate (R. 27–28). When the interim report was offered in evidence, with defense counsel objecting (without more), the court stated it had been received "insofar as it is pertinent to our issues" (R. 28). The report was not given to the jury.

3. *The "clean-up commission"*

Defense counsel did not object to testimony that the committee had issued subpoenas for the production of records in Ohio, but he interposed a bare objection to evidence that the committee investigated locals and affiliates of the Teamsters Union in Ohio, and issued subpoenas for this investigation (R. 28–29). When Senator McClellan was asked if, in August 1958, it came to his attention that the Teamsters Union intended to expend funds for a "clean-up commission" (R. 30), the following ensued (R. 30–31):

> MR. KNACHEL: Objection, your Honor.
>
> THE COURT: Well, would that be hearsay evidence? How did he hear it? I just don't quite get the purpose of it.
>
> MR. KIERNAN [prosecutor]: Information which would come to the attention of any investigative body would of necessity be hearsay, but it would give rise to that investigative body's subsequent decision to look into a particular matter.

The Court: You mean that was the basis for your inquiry?

Mr. Kiernan: That is right.

The Court: He may answer.

Mr. Knachel: Objection.

Senator McClellan then related that he had been told by a Teamsters attorney that the union intended to expend funds for a so-called "clean-up commission" to investigate corruption within the union. This, the witness stated, interested the committee because Mr. Hoffa, Provisional President of the Union, had testified before the committee that he would clean up the improper practices within the union, and because the commission, with its attendant expense, had been appointed for this purpose. The court permitted testimony, over a general objection which it interpreted as directed to materiality, that former Senator George Bender was appointed as the commission chairman (R. 30–33). When the witness was asked if reports had come to the committee's attention causing it to investigate the relationship between Bender and the Teamsters, petitioner's counsel objected, stating, "May I say, Your Honor, aren't we sometime during this trial going to have any witness to testify directly rather than all this hearsay?" (R. 33–34). The Senator next testified over general "objection" that investigator Sheridan was directed to pursue a study of the Bender appointment in connection with the investigation under way in Ohio (R. 34).

4. *The transcript of Sheridan's testimony*

Senator McClellan identified a printed transcript of a committee hearing, noting that Sheridan testified before the committee on September 17, 1958 (R. 34-35).[10] The Senator was asked to refresh his recollection from the document and state if Sheridan had testified to a visit to Cleveland. When petitioner objected, the court inquired, "Can't the witness Sheridan himself testify that he made this visit?" The government responded, "I am trying to avoid recalling the Senator. Before we get certain matters in evidence directly I would like the Senator to be able to testify as to their pertinency" (R. 35). The following occurred (R. 35-36):

> **Mr. Knachel**: I object.
>
> **Mr. Kiernan**: It is merely a matter of the order of proof which is discretionary with the Court.
>
> **The Court**: Well, there is some merit to it. Of course the Government must prove that these matters were pertinent to their inquiry, that they bore a reasonable relation to the matter under investigation, and that is rather difficult to prove except in the way that it is being done.
>
> That was one of the elements of the offense that these were matters which the committee had under investigation and they were relevant and pertinent to their inquiry and that they were entitled to the records and papers which are the subject of this lawsuit in connection with that inquiry. I assume that is the basis?
>
> **Mr. Kiernan**: That is it.
>
> **The Court**: I will permit the Senator to answer.

---

[10] Petitioner in his opening statement had made an issue of the fact that he had no right to cross-examine Sheridan at the committee hearing (R. 362).

Mr. Knachel: Your Honor, it would seem to me that you try a lawsuit by subpoenas issued and the witness that they served them on.

The Court: This is a matter of public record. This isn't hearsay, it is a matter of public record.

Mr. Knachel: That record isn't in evidence.

Mr. Kiernan: The record is being used to refresh the witness' recollection.

When the court suggested that the record ought to be in evidence, the government stated that it was agreeable to offering it in evidence or allowing the witness to refresh his recollection from the record. Petitioner objected to both procedures; and the prosecutor stated, "To suit the convenience of the Defense Attorney we will offer it" (R. 36). The witness testified that Sheridan had told the committee about his visits to petitioner in September 1958 (R. 37). When the witness suggested that he could read the testimony, the court responded: "Well read it", and said to the prosecutor, "Tell the Senator that what you are interested in knowing is what Mr. Sheridan testified as it relates to the knowledge the committee had of the pertinency of this matter" (R. 37). The transcript of Sheridan's testimony before the committee concerning the September 9 and 13 visits to petitioner were read to the jury, again over a general "objection" (R. 38–41).

5. *The identification of the recipients of gifts*

Senator McClellan identified Mr. Dave Beck as former President of the Teamsters, Mr. English as its Secretary-Treasurer, Mr. Hoffa as its Provisional

President, Mr. Bender as a former Senator and Mr. Dorfman as connected with an insurance agency which had done considerable business with the Teamsters.[14] At the outset of this phase of the case, petitioner objected generally. The Senator testified that Mr. Beck had been of concern to the committee but that he did not know Mr. Connell or Mr. Bliss (R. 41–43). The Senator then read, over a general objection, the following reference to Dorfman in the interim report (R. 43–44):

> Or Paul (Red) Dorfman, who reached ascendancy in the Chicago labor movement after the murder of his predecessor and who has maintained a continuous association with Chicago mobsters.

6. *The conclusions of Senator McClellan*

The witness also stated, over general objection, that under its resolution the committee was interested in securing information regarding domination of unions by racketeers, that the sending of gifts by the Joint Council indicated a relationship other than mere acquaintanceship since frequently such gifts indicated attempted improper influences and, in some instances, a conflict of interests. He asserted that it was of concern to the committee to know the past relationship between Senator Bender and the organization that he was preparing to "clean up" (R. 45–46). His testimony concluded as follows (R. 45–46):

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[14] The identification of the names on the invoice was discussed in a pretrial conference (R. 352–358). Petitioner took the position that none of the names was pertinent (R. 356).

Q. Now, in the event the invoice which you testified about had, in fact, originally contained the list of names which were read into the record, and in the event, Senator, that those names were removed from the invoice, would that tend to obstruct the business of the committee?

Mr. Knachel: Objection, your Honor.

The Court: You may answer.

A. It would prevent the committee from getting that information which was pertinent to its inquiry, unless the committee might be able to get it elsewhere; and even if it could get it elsewhere, it would tend to obstruct, because it would make the committee's duties and work more burdensome by reason of not being able to get it where it was expected to be found and where it originally was.

Mr. Knachel: I move to strike the answer.

The Court: It may remain.

Senator McClellan also concluded, over the same general objection, that, if the sheets of paper actually existed as Sheridan had stated, withholding it from the committee would hinder and prevent the committee from carrying out its duties (R. 46).

B. THE PROPRIETY OF ADDUCING SENATOR M'CLELLAN'S TESTIMONY BEFORE THE JURY

1. *On the issue of pertinency*

As is evident from the action of the court throughout the trial and its instructions at the conclusion, the trial court considered that the issue of pertinency was for the jury and hence that the evidence on that subject was for the jury. At the trial, petitioner did not object to this procedure; he never claimed that

Senator McClellan's testimony should be adduced before the court alone. Petitioner's objections in most instances were made without explanation of the grounds thereof. His only specific objections were three: (a) the authorizing resolution was the best evidence of the committee's functions; (b) testimony beyond the authorizing resolution was self-serving; and (c) the information that the chairman received concerning former Senator Bender was hearsay. The court interpreted many of the general objections to be based on the ground of relevancy and overruled them because the evidence was plainly relevant to the issue of pertinency. Yet petitioner never once suggested that even if relevant to this issue the evidence was not for the jury. And as we pointed out above, he was content to allow the jury to decide the pertinency issue (R. 307). Petitioner cannot pursue one course at the trial and when it has proved unprofitable shift his position on appeal. *Johnson* v. *United States*, 318 U.S. 189, 201.

It is particularly fitting that petitioner should be held to his acquiescence at the trial in the presentation of evidence of pertinency before the jury since there is a cloudy area in this field as to when evidence of pertinency may be heard before the jury. It is true that this Court has held that the trial court normally should determine as a matter of law whether questions asked by a subcommittee are pertinent to the subject under inquiry. *Braden* v. *United States*, 365 U.S. 431, 435–437; *Sinclair* v. *United States*, 279 U.S. 263, 299. A trial judge does not, however, always have to exclude the jury when evidence is presented as to an issue of law. He has an area of discretion as to whether to hear the evidence outside of the presence of the jury. See *Holt* v. *United States*, 218 U.S. 245, 248-250; *Keeney* v. *United States*, 218 F. 2d 843, 849 (C.A.D.C.) (concurring opinion). And even the submission of pertinency questions to the jury is not unknown. Where, after an initial determination by the trial judge that the matter is pertinent, there is left a question of fact bearing on the basis for this determination, it has been held proper to present this mixed question of fact and law to the jury. *United States* v. *Orman*, 207 F. 2d 148, 156 (C.A. 3); cf. *Christoffel* v. *United States*, 338 U.S. 84. Submission of such issues to the jury usually favors the defendant, and accordingly, the appellate courts have refused to reverse where timely objection to this mode of proceeding was not made. *United States* v. *Moran*, 194 F. 2d 623 (C.A. 2), certiorari denied, 343 U.S. 965.[12] There was nothing in this testimony which would have confused the jury or biased them unfairly against petitioner in deciding the contested factual issue in this case—*i.e.*, whether petitioner destroyed or concealed the records. Accordingly petitioner, who permitted the evidence of pertinency to be adduced before the jury without objection and who acquiesced in the submission of the issue to the jury, should not now be permitted to claim prejudice from this method of handling the case.

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[12] Petitioner's reliance on *Keeney* v. *United States*, 218 F. 2d 843 (C.A.D.C.), is misplaced. The jury heard evidence linking the defendant to a worldwide communist movement and to acts of espionage and sabotage. Both sides there recognized that the issue of pertinency was for the court and defense counsel specifically and repeatedly requested that the court hear testimony on this issue outside of the presence of the jury.

Petitioner's claim in this connection that he was deprived of his right to have the trial court rule on pertinency is without substance. At the very minimum, the trial court, by submitting the issue to the jury, ruled that the evidence sufficiently showed pertinency to warrant submission of that issue to the jury. Moreover, petitioner made no request to have the court rule on this issue. Finally, it is sufficient that an appellate court alone rule on any issue of law and, as has been pointed out above (*supra*, pp. 31-33), the documents concealed or destroyed were plainly pertinent to an authorized committee investigation.

2. *On other issues in the case*

Aside from the fact that petitioner acquiesced in the trial judge's view that the testimony of Senator McClellan as it bore on the pertinency of the records should be heard before the jury, petitioner's objections to the taking of this testimony before the jury are invalid because most of this testimony, including the parts about which petitioner most complains, would have had to come before the jury in any case. Even if the judge had conducted a hearing outside the presence of the jury and had concluded that the documents sought were relevant to the inquiry, still the nature of the committee investigation, the authority of Sheridan to act for the committee, and the significance of the names on the destroyed records in relation to the committee's inquiry would have had to be developed before the jury. To make out a case under the obstruction statute the government was compelled to prove that an investigation was in progress and that petitioner had notice of such an inquiry and made an effort to interfere with it. *Pettibone* v. *United States*, 148 U.S. 197. There is no method of trying a case of this character without informing the jury about the nature of the investigation and the subject matter of the committee's inquiry—either by evidence or by instructions from the court as to the nature of the investigation. And in this connection, with respect to Sheridan's testimony before the committee, the government also had to show Sheridan's authority to demand the records. See *infra*, pp. 51-53.

Beyond this, the major portion of Senator McClellan's testimony was properly adduced before the jury because it bore on the question of motive. The evidence that petitioner destroyed the records was circumstantial to the extent that no one testified that he actually saw petitioner destroy the records. It was therefore a proper part of the government's case to show that petitioner had a motive to destroy them. *Moore* v. *United States*, 150 U.S. 57; *Zamloch* v. *United States*, 193 F. 2d 889, 892, certiorari denied, 343 U.S. 934; 1 Wharton, *Criminal Evidence* (12th ed.), § 166; cf. *Glasser* v. *United States*, 315 U.S. 60, 81; *Williamson* v. *United States*, 207 U.S. 425, 451. That motive, in the government's view, was that, to petitioner's knowledge, the committee was interested in discovering both that the union was using union funds to make expensive Christmas gifts and that

Senator Bender, who was to head the "clean-up commission", had had prior relations with the Teamsters and that the committee was interested in obtaining records which would document such facts. It is true that to establish petitioner's motive the government had to show, not only that the committee was interested in these matters, but that petitioner knew that the committee was interested. Petitioner is incorrect, however, in his contention that the testimony on the subjects of interest to the committee had no bearing on the issue of his motive and knowledge. Unless there is an admission of knowledge—and there was none here until petitioner took the stand—the first step in showing knowledge of certain things is to prove that those things actually existed. The evidence cannot all go in at the same time, and the jury first had to know in what the committee was interested in order to decide whether petitioner knew of such interest. Petitioner's remark to investigator Sheridan after the records were found mutilated, that "You have your job to do. I have mine" is fairly meaningless in itself; it becomes full of meaning, however, against a background of knowledge as to what Sheridan's job was in relation to the Teamster records in Cleveland.

Moreover, in the circumstances of this case the claim that Senator McClellan's testimony on the subjects of interest to the committee had no tendency to prove petitioner's knowledge of the committee's concern with the destroyed records is particularly untenable. Petitioner had been served with a subpoena to produce records on March 21, 1958, three days before the interim report of the committee, almost six months before Sheridan visited the Ohio office of petitioner's union and requested the records subsequently left with petitioner for photostating. It is a reasonable inference for a jury to make that in the interval between the subpoena and Sheridan's second visit—at the very least, in the interval between Sheridan's first and second visit—the responsible head of a union under investigation and subpoena would acquaint himself with the subjects of interest to the committee, matters which had been detailed in a public document open to the press.

It so happens that when petitioner took the stand he did not contest knowledge of the inquiry. He testified that, although he had "no recollection of such a thing as an interim report," he had heard that the committee made reports to the Senate and knew what he read in the papers about special findings with respect to the Teamsters Union (R. 255-256). The government could not, however, know this when it was putting on its affirmative case. It had to present evidence of knowledge and motive as part of its own case and Senator McClellan's testimony was part of that proof.

It is in this light that petitioner's specific objections to Senator McClellan's testimony must be viewed. When so judged, it becomes evident that with one minor exception, which was not prejudicial, the testimony was properly before the jury, both as to pertinency and as to motive.

C. THE ADMISSIBILITY OF SPECIFIC TESTIMONY

1. *The subject of inquiry*

Petitioner contends that proof of the scope of the committee's inquiry was limited to the Congressional resolution and that other evidence on this issue was inadmissible. As this Court has recognized, the authorizing resolution is only one point of reference as to the subject of an inquiry being undertaken by a committee at a particular time. The proper meaning of the authorization must be determined by the course of congressional action (see *Wilkinson* v. *United States,* 365 U.S. 399; *Barenblatt* v. *United States,* 360 U.S. 109, 117) and those best qualified to describe the general nature of an investigation are the persons familiar therewith. This is the reason that evidence by committee members or counsel has been held admissible. *United States* v. *Moran,* 194 F. 2d 623, 626 (C.A. 2), certiorari denied, 343 U.S. 965. See also *Deutch* v. *United States,* 367 U.S. 456, where an attorney for the committee testified concerning earlier hearings. This is not "self-serving"—the objection made by petitioner at the trial—any more than any testimony by a person as to what he has done is "self-serving".

In relation to the issue here, whether the records of Christmas gift expenditures by the union bore a reasonable relation to the inquiry and even more in relation to petitioner's motive to destroy the records, it was manifestly necessary to be more specific than the general resolution authorizing an investigation of criminal and other improper activities by unions. It was necessary to show that the committee was justified under the resolution in inquiring into the use of union funds for improper purposes. The recommendations of the interim report and Senator McClellan's testimony both show that the committee was interested in the expenditure of union funds for improper purposes. The interim report also indicates that Congress as a whole was aware of the nature of the committee's investigation. The report was admitted for a limited purpose (See *supra*, pp. 37–38) and did not go to the jury. The government attorney in his closing argument told the jury that the sole reason for mentioning a portion of the interim report "was to show the Committee was interested in certain individuals in the Teamsters Union, and that the report had been issued, and the probability that the defendant, Mr. Presser, would have known of the report and what the Committee was interested in" (R. 335). The judge refused to send the interim report to the jury (R. 212–213).

2. Sheridan's testimony before the committee

Petitioner complains (Br. 31–32) of the reading into evidence of a transcript of Walter Sheridan's testimony before the committee concerning his visits to petitioner on September 9 and September 13, 1958, on the ground that it bolstered Sheridan's similar testimony at the trial (Br. 31–32). It was, however, relevant both to the issue of pertinency and to the basic issue whether petitioner's acts violated the statute to show that Sheridan, in requesting the documents (ultimately left with petitioner for photostating and destroyed by him), was acting for the committee and under its authority. The government attorney recognized that as to this aspect of the case the Senator's testimony was possibly out of proper order, but noted that he was trying to avoid recalling the Senator. It was on this basis that the court, in its discretion, allowed the evidence as to Sheridan's authority to go in at that time (see *supra*, pp. 40-41 (R. 35-36)).

The reading of Sheridan's testimony was suggested by the Senator and agreed to by the court after the government offered to use the testimony as a means of refreshing the recollection of the witness. The purpose of this reading was, however, made clear when the court said to the prosecutor, "Tell the Senator that what you are interested in knowing is what Mr. Sheridan testified as it relates to the knowledge the committee had of the pertinency of this matter" (R. 37).

It is clear from these facts that this evidence was not introduced to corroborate Sheridan's subsequent trial testimony and that it did not prejudice petitioner. The transcript of Sheridan's testimony before the committee (which did not go to the jury) was plainly introduced on the issues of pertinency and of Sheridan's authority to show that the information sought from petitioner bore a reasonable relationship to the matter under investigation and that Sheridan was acting under authority of the committee. To the extent that it showed Sheridan's authority from the committee, the evidence was properly before the jury, irrespective of the issue of pertinency.

There was no reason why the government would wish to corroborate Sheridan's future trial testimony by his evidence before the committee. Sheridan made notes of the invoice and of the paper memorandum on his first visit (R. 69). These notes were the chief corroboration of his trial testimony, not his prior recital to the committee. Petitioner did not dispute the facts reported by Sheridan to the committee; his main defense was that during the four days between Sheridan's visits he was not in exclusive control of the documents and that he had been out of town during the major portion of that time. The contradiction was not between petitioner and Sheridan, but between petitioner (who testified he was visiting James R. Hoffa in Washington between the Sheridan visits) and telephone company records, placed in evidence in rebuttal, which disclosed two person-to-person calls ~~from Hoffa~~ in Washington to petitioner in Cleveland during this period of time.[13]

3. *Identity of the recipients of gifts*

Although he concedes that "it was incumbent upon the Government to prove that the proper names on the documents demanded * * * were relevant or pertinent to the subject under inquiry by the Committee" (Br. 25), petitioner objects to the testimony identifying the persons to whom the champagne buckets had been given, and the use of the committee's interim report in this connection (R. 41–45).

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[13] *Mellon* v. *United States*, 170 F. 2d 583 (C.A. 5), relied on by petitioner, involved a direct contradiction between the defendant and the chief government witness, so that the corroboration by prior statement was crucial.

The evidence shows that six of the eight named recipients were identified in Senator McClellan's testimony. Of those identified, four were described simply as Teamsters officials—Dave Beck as a former Teamsters President, English as a Secretary-Treasurer, Hoffa as Provisional President, and Brennan as Vice-President. George Bender was identified as a former United States Senator. Connell and Bliss were not identified. Subsequently, petitioner himself described Bliss as a State Chairman of the Republican Party. Only Dorfman was characterized as a person of bad repute—being described from a reference in the interim report as follows (R. 44):

> Or Paul (Red) Dorfman, who reached ascendancy in the Chicago labor movement after the murder of his predecessor and who has maintained a continuous association with Chicago mobsters.

This line of testimony was not offered to attack petitioner's character but because it was relevant to the question of pertinency and even more to the issue of petitioner's motive to destroy the papers. See *United States* v. *Weber*, 197 F. 2d 237 (C.A. 2), certiorari denied, 344 U.S. 834. The identity or at least the position of the individuals listed in the records was directly relevant to the issue of motive. Obviously, a person who knew a committee was interested in misuse of union funds could have an interest in keeping from the committee evidence that union funds were going for expensive gifts for union officers. One who knew that the committee was interested in a "clean-up commission" would have a reason to destroy records showing prior gifts to the head of that commission. One who was aware that the Teamsters might be forced to discharge any union official who was associated with anyone with a bad reputation[illegible] would have a motive to keep the committee from learning the names of persons with such reputations who had received Christmas gifts. This testimony was thus properly before the jury irrespective of the correctness of the judge's ruling on pertinency.

The government limited its use of this testimony to the matter to which it was strictly relevant. The government did not attempt to capitalize on the testimony either in closing argument or in its cross-examination of petitioner's character witnesses.

At the conclusion of the government's case, during a discussion as to which exhibits the jury should see, the trial court had no recollection of any mention of Dorfman. As noted, it concluded that the interim report should not be shown to the jury because it was too remote. At that time, petitioner himself did not consider the Dorfman reference to be of sufficient importance to recall it to the court or move for a mistrial. It has assumed magnitude only since the case came on appeal.

4. *The confusion as to distinction*

The only testimony of Senator McClellan to which petitioner objects and which would not have gone before the jury on issues other than pertinency is the Senator's testimony that failure to obtain the invoice

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[illegible] Petitioner admitted in his testimony that he believed this to be likely (R. 258-262).

and memorandum would hinder and obstruct the work of the committee (R. 45–46). It is entirely clear that petitioner could not have been prejudiced by the admission of this testimony which in no way bore upon petitioner's knowledge and wilfulness in destroying or concealing documents sought by the committee. The wilful destruction or concealment of pertinent documents plainly constitutes at least an endeavor to impede the committee proceedings. Senator McClellan's testimony as to the effect of petitioner's action was therefore significant only in its bearing upon the pertinency of the documents. But its admission could not have been prejudicial to a fair determination of the issue of pertinency whether this issue was to be considered by the trial judge or the jury, for the other evidence overwhelmingly established the pertinency of the invoice destroyed and the memorandum concealed.

III

THE PROSECUTOR'S CLOSING ARGUMENT WAS NOT INFLAMMATORY AND WAS BASED ON PROPER INFERENCES FROM THE EVIDENCE

Petitioner, who made no objection at the trial to the closing argument, now complains that it was unfair (Br. 36–38).

1. He claims that the mention of some of the specific names on the mutilated invoice constituted a reference to "criminals", "racketeers", "unsavory characters" and "persons of bad reputation" (R. 343–344, 347–348). Examination of the argument shows that the prosecuting attorney went out of his

way to caution the jury about such matters (R. 344):

> Now, the purpose for bringing out whether or not Beck, Hoffa, Brennan, or Dorfman, or anyone else, has a bad reputation is not so that it will reflect in any way on the defendant, and it shouldn't, because anyone who had been in the labor movement or any other movement where there would be people who might have a bad reputation, you couldn't help of necessity but have some contact with them. That was not our purpose in bringing it out, and we don't want it considered against the defendant in that way. The purpose for our bringing it out, you will recall Mr. Presser testified from the minutes of the Joint Council meeting of August 14, 1958 * * * he was afraid that he might be fired from his job by the monitors, and that the cause of the firing could be an association with people of bad reputation. Now, we wanted to show that some of the people in this organization did have a bad reputation, or at least what might be considered a bad reputation, and that this would be another motive for Mr. Presser destroying the document or concealing his association with them from the public.

Thus, the summation made it crystal clear that the testimony with respect to people of bad reputation was to be considered only in regard to the question of petitioner's motive based on his own testimony, and for no other reason. This summation was totally unlike the argument criticized by this Court in *Viereck* v. *United States*, 318 U.S. 236, 247. Moreover, petitioner did not request the court to limit this testimony in any manner (R. 387-388).

2. Petitioner also claims that the prosecuting attorney misstated the testimony of the champagne bucket salesman, Charles Schaeffer. The record shows that Schaeffer testified that petitioner called him in September 1958 and asked him whether he, Schaeffer, had any records of anything that had been sold to him or the Teamsters Union in the form of gifts and that particular reference was made to champagne masters (*i.e.*, buckets). Schaeffer then called the selling company, and in turn asked for duplicate copies of any invoices pertaining to such sales. He was not able to obtain these copies from the company and so informed petitioner (R. 209). The prosecutor's argument that petitioner asked the salesman to obtain other copies pertaining to this gift was a fair interpretation of this testimony (R. 341-342, 384). Significantly, petitioner made no objection to this argument nor did he mention it when he referred to th salesman in his closing statement (R. 376).

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment of the court of appeals should be affirmed.

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OCTOBER TERM, 1961.

No. 278.

WILLIAM PRESSER,
Petitioner,

vs.

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Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

REPLY BRIEF OF PETITIONER.

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REPLY BRIEF OF PETITIONER.

I.

1. Petitioner made no issue that the Committee was not properly constituted and would not have been pursuing its function in investigating into labor-management relationships (R. 212a). However, the Petitioner contends that in the present case the Petitioner did not obstruct or impede the due and proper administration of the law under which the Committee was investigating, or the due and proper exercise of the Committee's power of inquiry as charged in the indictment.

2. The manifested exercise of the power of inquiry by the Committee was the subpoena served upon the Petitioner on March 21, 1958 (R. 58a), for the alleged violation of which the Petitioner was indicted and convicted (R. 5a). However, the prohibition of the statute is the obstruction or attempted obstruction of the due and proper exer-

cise of the power of inquiry under which the Committee was conducting its inquiry or investigation.

The Committee's power to investigate is based upon the authority granted by Senate Resolution 74 (Gov. Ex. 5-C; R. 312a). Its exercise of that power of inquiry under its authorizing resolution must be in accordance with 2 U. S. C. § 190b and the Committee's own rules of procedure (Gov. Ex. 6; R. 313a). It is submitted, therefore, that the record does not disclose that the documents demanded were pertinent to any subject under inquiry by the Committee.

3. The contention that the element of guilty knowledge or intent of the crime was "fully established by proof" is grounded on gross assumptions not warranted by the record.

The record does not disclose with any degree of particularity that the documents were pertinent to the Committee's investigation.

The documents were not under subpoena by the Committee and the Petitioner challenged the validity of the subpoena at the time it became evident that the subpoena was a void process.

The only knowledge which the petitioner had that the documents could be pertinent to any subject under inquiry by the Committee must have come from the subpoena, for the record fails to disclose that any Committee member or employee of the Committee discussed any documents with any member of Joint Council 41, including the Petitioner, until September 13, 1959. At this time the crime as laid in the indictment had been completed.

The trial court and the prosecution inserted the element that the documents must have been in fact pertinent to the matter under inquiry by the Committee (R. 35a, 36a). When the prosecutor attempted to justify Senator McClellan's reading to the jury the testimony that investigator Sheridan had given before the Committee, the court commented that such testimony was admissible to prove that the documents were pertinent to the matter the Committee had under investigation (R. 36a). The prosecutor at this point agreed that that was the purpose of Senator McClellan's reading the testimony of investigator Sheridan (R. 36a).

A.

The Petitioner has not advanced the argument that although he had agreed to turn over records to the Committee after preliminary examination by an investigator, he now attempts to meet the charges made against him on the ground that the subpoena was defective.

First, neither the Petitioner nor any person affiliated with Joint Council 41 **agreed** to turn over Joint Council records to the Committee. The records were sought and obtained under color of the coercive power of the Committee's compulsory process.

Sheridan served the subpoena on Petitioner personally on March 21, 1958, a subpoena claimed by Sheridan to have been issued against Joint Council 41 by the Congress of the United States (R. 57a). Sheridan then went to the office of Joint Council 41 on September 9, 1958, because, as he stated, **the subpoena had not been complied with** (R. 60a, 63a). The violation of the subpoena is the only basis for obstruction, or endeavor to do so, of the Committee's power of inquiry that is laid in the indictment (R. 6a).

Second, there had been no preliminary examination of any records of Joint Council 41 prior to the service of the subpoena on March 21, 1958.

Third, the subpoena involved in this case was not merely defective, it was void.

1. The obstruction statute may not be confined or limited to those records sought through the compulsory process of the Committee. However, the Petitioner has been charged with the violation of the Committee's compulsory process. The failure of that process cannot logically warrant a conclusion that the documents were voluntarily produced. They were produced because of the coercive effect of the subpoena, which was ostensibly a valid exercise of the Committee's power to demand the documents.

The Petitioner has not misconceived his duty to the Committee under 18 U. S. C. § 1505. However, it should be clear that his duty results from the obligation of Joint Council 41 to comply with the subpoena served upon him on March 21, 1958. It is the alleged failure of the Petitioner to recognize this obligation of Joint Council 41 for which he was indicted and convicted.

To state that the Petitioner knew the Committee wanted the union invoice and memorandum is to assume a fact which is not substantiated by the record, either directly or by inference. The subpoena demanded any and all records of Joint Council 41 for a ten year period. When Sheridan served the subpoena he particularized no document or record. When Sheridan went to the office of Joint Council 41 on September 9, 1958, he examined several file cabinets (R. 63a, 66a) of records and proposed to take four separate files. Indeed, there is every indication that Sheridan did not have any particular or specific purpose in going through the files of Joint Council 41 except for the purpose of a general search for material which he felt might interest the Committee (R. 66a).

2. The Government here recognizes the distinction that exists between a subpoena **issued** by the Committee and a **blank** form signed by the Chairman. However, a subpoena not **issued** by the Chairman or an authorized member of the Committee in writing, cannot in fact be the compulsory process of the Committee.

a. The records that were produced at the Cleveland Field Office of the Committee were produced only through the coercive effect of the subpoena and not by any agreement between Joint Council 41 and the Committee or its members. The arrangement for the production of these records was effected through Arthur Kaplan, a staff investigator of the Committee, and representatives of Joint Council 41 (R. 59a), but only pursuant to the subpoena served upon the Petitioner on March 21, 1958. Arthur Kaplan did not testify at the trial.

The arrangement effected by Arthur Kaplan was carried out between representatives of Joint Council 41 and field office personnel identified only as Paul T. Riebesell and Helen Thorpe (R. 83a, 147a) of the Cleveland Field Office. Neither Mr. Riebesell nor Miss Thorpe testified at the trial.

b. The evidence shows that in all likelihood the chances are that the subpoena was not **issued** by the Committee Chairman or any member of the Committee authorized by the Chairman in writing. The evidence is clear that Senator McClellan was not aware that any documents were being delivered at the Cleveland Field Office except by the fact that they finally appeared before the Committee (R. 29a).

The argument advanced by the Government that the evidence does not show that the issuance of the subpoena was **not** authorized by Senator McClellan, aside from admitting that the subpoena was not the valid process of the Committee, serves only to underscore the officious act of a Committee employee. If the Committee Chairman authorized any one to issue subpoenas the Committee Rules of Procedure (Gov. Ex. 6; R. 313a) required that the authority be confined and limited to another member of the Committee and that it be in writing.

There is no evidence in the record that Senator McClellan authorized, in writing, any member of the Committee to issue the subpoena which forms the basis of the Petitioner's indictment. Nor was any such authority ever granted (R. 350).

Of more significance in this regard, however, is the fact that neither the Chairman, nor the Committee as a whole, had any authority under the Committee Rules of Procedure to delegate the Committee's power of compulsory process to any one not a member of the Committee. Therefore, neither the Chairman nor the Committee could ratify an act of a Committee employee that it could not delegate to that employee in the first instance.

Even upon the Government's assumption that the issuance of the subpoena by the Committee employees could be ratified, the ratifying act of the Committee or the Senator does not appear in the record and certainly this ratification could not have occurred before September 13, 1959,[1] at which time the crime, if any, as laid in the indictment was complete. The Petitioner's rights are fixed as of that time. *United States v. Heinszen*, 206 U. S. 370 (1907); *Silverthorne Lumber Co. v. United States*, 251 U. S. 385 (1920).

c. It is submitted that the fact that the subpoena was signed in blank renders it void and not merely defective.

---

[1] The Chairman and the Committee were informed of Sheridan's charges on September 17, 1958 (R. 35a).

Whoever "issued" the subpoena and determined what documents he wanted of Joint Council 41, when, and where they should be delivered or produced, of course, had to purport to act for the Committee. To have acted on his own behalf would obviously have produced no records for his perusal.

It certainly is not obvious from 2 U. S. C. § 190b, Senate Resolution 74 and the Committee Rules of Procedure that the Congress of the United States has invested the Committee with any judicial powers whatsoever whereby it could determine the validity of the subpoenas which strangers purported to issue on its behalf contrary to its own rules of procedure.

The significant difference between the subpoena which the Petitioner has been charged with violating and subpoenas issued in blank under Rule 17a, Federal Rules of Criminal Procedure, is that subpoenas issued under the criminal rule are issued in accordance with the provisions of that rule of practice and are returnable to a judicial officer. The subpoena involved in this case was not *issued* in accordance with the provisions of Senate Resolution 74 and the Committee Rules of Procedure. The important distinction is that the subpoena under the criminal rule is returnable to a judicial officer having authority to rule. The subpoena issued by the Chairman or an authorized member is not returnable to a judicial officer, or body.

B.

The Petitioner's contention that the proper names on the demanded documents were not pertinent to any matter under inquiry by the Committee is based on the record produced by the Government against the Petitioner at the trial.

The fact that the Committee investigator made certain notes indicates that the documents demanded by the subpoena were not the subject of the Committee's inquiry, or at least the inquiry of the investigator.

The subpoena was served on the Petitioner on March 21, 1958, and purported to demand the production of all Joint Council 41 records and documents forthwith in Washington. On September 9, 1958, Sheridan, actively engaged in investigating Mr. Bender, without benefit of the field office personnel, obtained the very documents which it is now claimed had not been produced forthwith in Washington to the Committee (Br. p. 27). However, the investigator refused to give a receipt for the documents in accordance with the practice that had been established by the representatives of Joint Council 41 (R. 96a, 147a) and the field office personnel (R. 227a, 228a). Rather than being a meritless point unworthy of notice, the investigator's notes stand out as a symptom of his brazen abuse of the coercive power granted by Congress to one of its committees.

C.

The Petitioner does not contend that the Committee was not properly constituted nor does he contend that the Committee could not, as a matter of law, investigate improper activities in the labor-management field under its authorizing resolution.

The Petitioner contends that he has not obstructed or impeded, or endeavored to obstruct or impede, the due and proper exercise of the power of inquiry under which this Committee was conducting its investigation as charged in the indictment.

The argument of the Government that the "immediate purpose" of Sheridan's examination of the records was a "phase" of the overall investigation to determine whether

Mr. Hoffa was keeping his promise (R. 32a) must surely come very close to a judicial admission that the Petitioner's contention is factually correct.

The imagination of an overzealous committee investigator should not control the due and proper exercise of the power of inquiry delegated by Congress to one of its committees, nor should it determine the question under inquiry by the Committee.

D.

The direct testimony of Sheridan should not be confused with direct evidence of the commission of a crime or any act.

The Petitioner testified that he did not destroy or mutilate any documents (R. 232a) as did "all other persons who had an opportunity to do this deed."

The Petitioner testified concerning Sheridan's visit to the office of Joint Council 41 on September 13, 1958, and stated that he did not reply to Sheridan's accusation, "You have your job to do, I have mine" (R. 73a, 231a, 232a).

The evidence of the Government clearly shows that Sheridan left the office of Joint Council 41 *before* the Petitioner on September 9, 1958 (R. 70a, 172a). The Petitioner's testimony corroborates this. (R. 228a.)

The Petitioner's secretary, testifying on behalf of the Government, stated that the Petitioner was out of town on September 10 and September 11, following Sheridan's first visit to Joint Council 41 (R. 181a, 182a). The Petitioner's own testimony was that he believed that he returned from Washington on September 12, 1958 (R. 229a). There is no dispute that Sheridan's second visit to Joint Council 41 was on September 13, 1958.

The evidence which it is argued so impressed the jury and both lower courts is a complete misstatement of the record.

II.

The testimony of Senator McClellan cannot be justified as probative evidence supporting any material element of the charges laid in the indictment against the Petitioner (Br. of Pet., p. 21).

A.

1. The scope of the investigation referred to by the Government (Br. pp. 36, 37) pertained to those investigations which had resulted in the Committee's Interim Report. The Interim Report was concluded and filed with the Senate on March 24, 1958. No part of these proceedings involved the Petitioner or Joint Council 41.

2. The special findings and the legislative recommendations of the Committee have no logical significance as proof of the necessary elements of the offense with which the Petitioner has been charged (Br. pp. 20, 21). Whether there had been special findings by the Committee or legislative recommendations based upon those findings, or even an Interim Report, does not bear legally upon the elements of the crime charged. Moreover, the admission of the testimony in this regard was admitted subject to being definitely "tied up" by the prosecution (R. 26a).

The only tie up between the special findings and the legislative recommendations and the issues in this case are to be found in the prosecutor's cross examination of the Petitioner (R. 255a) and in his argument to the jury (R. 336a).

3. The testimony of Senator McClellan concerning the "clean up" committee served a number of purposes for the prosecution, none of which was conducive to a fair and impartial trial to the Petitioner.

First, the interest of the Committee in the clean up committee of the Teamsters apparently was based upon a promise that Mr. Hoffa had made to the Committee (R. 32a). After some negotiations between Mr. Hoffa and the Chairman, or other members of the Committee, had resulted in the Committee's belief that "nothing had been done" by Mr. Hoffa, the Committee decided to "ascertain just what was taking place" (R. 32a).

This testimony of the "special findings" impressed upon the jury that the organization, to which the Petitioner belonged, was admittedly full of corruption and people of bad reputation (R. 347, 348).

Second, the testimony concerning the clean up committee formed the basis for the cross examination of the Petitioner upon a matter which he had no control over nor anything to say about (R. 263a), and which was not relevant to any issue in the case.

Third, the testimony concerning the clean up committee also served as the foundation for the prosecution to argue to the jury that the interest of the Committee in Mr. Bender provided a motive for the Petitioner to destroy the documents (R. 345).

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Fourth, the testimony of the clean up committee provided the prosecution with its argument to the jury that the Committee was attempting to determine whether Mr. Bender, who had been hired by Mr. Hoffa, was going to do a legitimate job. Thus, the Petitioner was provided with another motive for concealing his friendship with Mr. Bender (R. 348).

4. The **prosecutor** sought to have Senator McClellan read the testimony Sheridan gave before the Committee to verify the pertinency of "certain matters" which Sheridan

would subsequently testify to before those matters were placed in evidence directly (R. 35a).

The **court** permitted the Senator to read Sheridan's testimony because the Government stated that "these matters" were pertinent to their inquiry and this would be difficult to prove except in the manner proposed (R. 35a, 36a).

The **Petitioner** objected (R. 34a, 35a, 36a).

5. The court permitted Senator McClellan to identify the recipients of gifts because the Committee was interested in the use of union dues for that purpose (R. 43a).

The identification of the recipients of the gifts formed the basis of a vigorous cross examination of the Petitioner. The cross examination, which certainly did not attempt to elicit the truth of the matters testified to on direct examination, was also permitted over general objection (R. 255a, 256a, 257a, 258a).

The prosecutor argued to the jury that the purpose for bringing out whether or not Beck, Hoffa, Brennan or Dorfman has a bad reputation was not to reflect upon the Petitioner because, as the prosecutor stated, any one in the labor movement or any movement where there might be people of bad reputation would have some contact with them (R. 344). The real purpose, the prosecutor agreed, for bringing out the bad reputation of these men was (1) to show that the Petitioner was afraid that he might be fired by the monitors for associating with people of bad reputation, and (2) to show that some people in the Teamsters organization had bad reputations and that this would provide the Petitioner with the necessary motive for destroying the documents or concealing his association with people of bad reputation (R. 344).

6. There is no dispute that the trial court considered pertinency as a question of fact and submitted that ques-

tion to the jury upon evidence to which the Petitioner had interposed objections. It is argued now that the trial court had some discretion in this matter and that by submitting the issue to the jury actually ruled that the evidence sufficiently showed pertinency to warrant submission to the jury (Br. pp. 45, 46).

However, if the view of the trial court is correct then the conclusions of Senator McClellan (R. 45a, 46a) usurped the function of the jury and concluded the ultimate fact the jury would have had to determine. Therefore, regardless of the view the Government takes of this matter the action of the trial court deprived the Petitioner of a fair and impartial trial. *Simmons v. United States*, 206 F. 2d 427 (C. A. D. C. 1953).

B.

1. The Petitioner is not pursuing a different course for the purposes of this review from that pursued in the trial court.

The duty is upon the prosecution to prove this element of the crime and in a manner that assures the Petitioner of a fair trial. The testimony to which the Petitioner objected and which the trial court concluded should go to the jury was not admissible for any purpose. Even in *United States v. Orman*, 207 F. 2d 148, 156 (3rd Cir. 1953) the court first determined that the questions could be pertinent from evidence *aliunde*, and then submitted to the jury whether or not they actually were.

Whether the submission of the issue of pertinency "usually favors" the accused does not warrant the conclusion that the Petitioner was favorably treated in this case. Nor can it be said that the Petitioner acquiesced in the conclusions of the court. The Objections of the Petitioner were not nullities and cannot be construed as an invitation to the trial court to submit pertinency to the jury's determination as a matter of fact. Even now the Government can only claim that the "major portion" of Senator McClellan's testimony is admissible for some other purpose (Br. pp. 35, 46, 47), and has conceded without specifying (Br. p. 49) that in one minor instance Senator McClellan's testimony was improperly before the jury both as to pertinency and as to motive.

2. It should be noted that the "subjects of interest" of the Committee could have no bearing upon **knowledge** of the Petitioner. The knowledge properly chargeable to the Petitioner must be embodied in the subpoena, the violation of which is the basis of his indictment. The Government has recognized the purpose of the subpoena during the prosecutor's argument to the jury (R. 33a, 36a).

It is argued that it is a reasonable inference for the jury to conclude that inasmuch as the subpoena had been served upon Joint Council 41 approximately six months prior to Sheridan's visit to the office of Joint Council 41 that the Petitioner would have acquainted himself with the "subjects of interest" of the Committee, as set out in the Interim Report. This argument is completely without merit to justify the admission of the "subjects of interest" of the Committee through Senator McClellan. More specifically, the inference to be drawn from the fact that Sheridan went to the office of Joint Council 41 approximately six months following the service of the subpoena is that the Petitioner did not destroy any documents. For if the Petitioner had the knowledge attributable to him by the Government, together with the *mens rea* with which he is accused, the documents which investigator Sheridan claims to have seen on September 9, 1958, would not have been in the file to which he was granted access.

C.

1. It was never established with any degree of clarity what subject was under inquiry by the Committee. Senator McClellan was permitted to go into past "subjects of interest" which he related or read to the jury. Even on the subject of investigating Bender as chairman of the "clean up" committee, the most he could muster to a leading question was, "there was some investigation in that area" (R. 34a).

The Chairman stated that the **question** was the use of union dues for the purchase of Christmas gifts, but proceeded to narrate the "findings" concerning some of the recipients of the gifts shown on the invoice. Specifically he related the findings of those recipients whom he characterized as having bad reputations.

Sheridan testified to the pursuit of his investigation of Bender (R. 62a). He also testified he had nothing to do with the arrangement for the production of documents of Joint Council 41 to the field office. He knew the field office customarily gave receipts for documents produced by Joint Council 41, but he did not know what documents had been produced (R. 96a).

Sheridan stated that he was "aware" that some documents were not produced, but this awareness came from conversations with Miss Thorpe and Mr. Reibesell over a period of time (R. 94a). He had no specific knowledge of the production of documents by Joint Council 41 (R. 96a).

Inasmuch as Bender's affiliation with the "clean up" committee became known to the Committee in late August, 1958 (R. 29a, 30a, 62a), and Sheridan's "immediate purpose" was to investigate the veracity of Mr. Hoffa's promise of a clean up, the question under inquiry to which the subpoenaed documents could be relevant or pertinent is more than a little nebulous.

2. The reading of the testimony of Sheridan was clearly prejudicial to the Petitioner whether the reading was suggested by the Senator or not. The statement of the court's purpose in allowing the Senator to read the testimony (R. 37a) is either unintelligible or is further indication that the Committee did not have complete knowledge concerning the pertinency "of this matter".

The Petitioner in his testimony did dispute the facts as Sheridan is reported to have testified before the Committee. The Petitioner's main defense was that he was not guilty of any of the acts charged against him. If the documents were torn or missing that circumstance alone was no proof that Petitioner had torn or secreted the documents because he was away from his office most of the time before Sheridan's visits and he did not have exclusive control of the documents involved during that time (R. 165a).

The direct conflict between Petitioner and Sheridan was their testimony as it related to Sheridan's visits to the office of Joint Council 41. Both Sheridan and the Petitioner knew of the practice of giving receipts for materials of Joint Council 41 that was in effect between the Joint Council 41 and the Committee Field Office (R. 96a, 227a, 228a).

Sheridan's notes could not be considered as corroborative of his trial testimony because of the conflict that existed between his testimony and that of the Petitioner. However, characterizing the notes as the chief corroboration of Sheridan's testimony is a tacit admission on behalf of the Government that Senator McClellan's testimony was, in fact, meant to corroborate Sheridan.

3. The Petitioner does indeed contend that the Government must prove that the documents demanded were pertinent to the subject under inquiry by the Committee.

However, the characterization of some of the recipients of gifts as men of bad character taken from "special findings", which in no way concerned the Petitioner or Joint Council 41, is extremely sophisticated evidence of proof of pertinency or motive.

The characterization of the recipients of the gifts also formed the basis for the objectionable cross examination of the Petitioner (R. 256a, 257a, 258a) and the very inflammatory argument of the prosecutor to the jury (R. 334a).

The Government scores the Petitioner for insisting that the Government prove that the proper names on the demanded documents were pertinent to the subject under inquiry and then for objecting to the testimony identifying the persons to whom the champagne buckets had been given as evidence of such pertinency (Br. 53). However, at no time during the trial following the admission of the "special findings" of the Committee was that evidence used for any purpose except the characterization of Petitioner.

The fact that the Interim Report did not go to the jury room is without merit because the prejudicial parts had been fully aired before the jury.[2]

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[2] Although that portion of the Interim Report which was used before the jury was never submitted to the jury during its deliberations, a much greater portion of the Interim Report was filed as a part of the record in the Petitioner's appeal to the Court of Appeals for the Sixth Circuit. The Petitioner filed a motion to strike the entire record on the ground that it had not been admitted into evidence. The Government sought to justify the inclusion of the Interim Report (R. 388-403) on the ground that it is a public document and was inserted for the convenience of the court. The Court of Appeals held the motion until the time of oral argument on the merits. That motion has never been ruled upon.

4. The prejudice of the Chairman's conclusions is set out in II A. 6 above.

However, it is not "entirely clear" to the Petitioner that evidence (a "major portion" being adduced to show motive) could form the basis for the Chairman's conclusions upon a matter of law which had been erroneously considered as a matter of fact, and fail to deprive the Petitioner of a fair trial.

What is clearer to the Petitioner is that the tutored reasons offered to justify the action of the trial court are sophisms.

CONCLUSION.

For the reasons set forth above it is respectfully submitted that the Petitioner is entitled to the relief prayed for in his Brief.

Respectfully submitted,

Edwin Knachel,
John G. Cardinal,
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Office Supreme Court, U.S.
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JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1962.

No. 25.

WILLIAM PRESSER,
Petitioner,
vs.
UNITED STATES OF AMERICA,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

PETITION FOR REHEARING.

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THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—MAIN 1-5647

FOREWORD.

The undersigned was the appellant's trial lawyer in this case. He has been a corporate civil jury trial lawyer for 32 years. He is a Fellow of the American College of Trial Lawyers. He is a member of the Executive Committee of the National Association of Railroad Trial Counsel. He is a former member of the Executive Committee of the Cleveland Bar Association. He is a member of the Judicial Administration Section of the American Bar Association.

As a result of this Court's action, he received the following entry dated November 13, 1962:

> "PER CURIAM. The judgment is affirmed by an equally divided court.
>
> "Mr. Justice Goldberg took no part **in the consideration** or decision of this case." (Emphasis supplied.)

On October 8, 1962 oral argument was had before nine Justices. Mr. Justice Goldberg sat on the Court and participated in questioning of counsel for appellant and appellee. With an equally divided Court, his refusal to vote caused an affirmance of a conviction in a criminal case. If a Juror in every Federal Case exercised such a right, every Federal Jury Trial (Civil or Criminal) would result in a "hung jury."

This case was originally argued on March 21, and 26, 1962 before the Supreme Court with eight Justices sitting. (Justice Whittaker was ill.) On April 2, 1962 this case was restored to the calendar for reargument and placed on the summary calendar. The irrebuttable presumption is that this case was restored to the calendar for reargument because at that time there existed an equally divided court. If this were not true, the case would have been decided upon the arguments presented in March of 1962. After three trips to Washington, and three arguments, we now stand as though the petition for writ of certiorari had been denied. A 5 to 4 decision—either way—would have resulted in a written opinion for the benefit of the Bench and Bar. This posture would be more consistent with the granting of a writ of certiorari.

The evil of an affirmance in a criminal case by an equally divided Court where nine Justices sat during the argument could only exist in this Country because of a weak Trial Bar.

Justice Clark, of this Court, addressed the American College of Trial Lawyers at Bal Harbour, Florida, on March 13, 1962, **just one week before this case was first argued.** His comments are pertinent to the problem produced by this affirmance:

> * * * "There are two factors necessary to maintain a healthy advocacy. The first is a strong trial bar, and the second is an efficient judicial system. I come here to counsel with you as to the state of both.
>
> "I talk with you because I believe that the genius of our system may be threatened. My case is laid before you because among you are the most successful and knowledgeable advocates in the profession. In addition, you have forged yourselves together into a strong, dynamic, and distinguished national College. It was Edmund Burke who said that 'evil grows because good men do nothing about it.' I have an abiding faith that you are 'good men.' Equally strong within me is the feeling that where evils exist you have the courage to do **something** about them."

To further make his point, Mr. Justice Clark also quotes Dean Drinan before the American Judicature Society:

> * * * " 'There is nothing more corrosive of conscience and destructive of integrity than the guilty knowledge that we tolerate each day—through fear or

> apathy—**conditions which we know should be and could be corrected.**" (Emphasis supplied.)

With reference to the fact that the Board of Governors of the American Bar Association had created the Joint Committee for the Effective Administration of Justice, Mr Justice Clark concluded as follows:

> "To help in this great undertaking, I extend to the College an invitation to appoint a representative to sit with us on the Joint Committee. Together we can forge a sequel to Edmund Burke's admonition, and it will be: 'Good men **will** do something about the evils of the law.' "

The evil of an affirmance by an equally divided Court in a criminal case where there has been a conviction should not be tolerated by nine sitting Justices. It is an abuse of the judicial process which should be submitted for consideration to the Joint Committee.

In the words of my high school Civics teacher:

"This small voice has now been heard."

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In the Supreme Court of the United States

OCTOBER TERM, 1962.

No. 25.

WILLIAM PRESSER,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR REHEARING.

The Petitioner, William Presser, respectfully prays this Court for its order granting a rehearing of its judgment of November 13, 1962.

REASONS FOR GRANTING REHEARING.

I.

The importance of the question presented by the Petition of William Presser is of such magnitude, not only to the Petitioner but to every citizen of the United States, that it warrants the consideration of the full Court.

The Petitioner has been indicted, tried and convicted for the obstruction of the due and proper exercise of the Committee's power of compulsory process. There is no denial by the Government that the subpoena (the violation of which forms the gravamen of the indictment) was not issued in accordance with the provisions of Senate Resolution 74 (Gov. Ex. 5-C, 312a) or the Rules of Procedure of the Senate Select Committee (Gov. Ex. 6, 313a).[1]

Even though the Court of Appeals has stated the law to be that there is "**nothing unlawful in the method used by the Committee in issuing the subpoena duces tecum**" (407) the Government has made no claim throughout this litigation that the subpoena ~~was~~ **lawfully issued.** The heart of the Government's position, in this regard, is that a subpoena is not necessary to the maintenance of an action for obstruction of justice under Title 18 U. S. C., Section 1505. Whether a valid subpoena is necessary to the maintenance of such an action may or may not be sound law (it may even be admitted here to be sound law); however, that issue is not at all involved in this case. A consideration of that issue confounds the real issue presented here, and the real and substantial issue is whether any non-compliance with a void process can be violation of any law particularly of Title 18 U. S. C., Section 1505.

If non-compliance (assuming non-compliance) with a void process can support the Petitioner's conviction, then the Petitioner is to be deprived of his protection under the Fifth Amendment to the Constitution. Neither the Petitioner nor any other citizen should be required to choose between compliance with a void process and imprisonment.

To require the Committee to exercise the delegated power of the Senate in the manner prescribed by Senate Resolution 74 and the Committee's own Rules of Procedure places no sanctions upon the Committee whatsoever.[2] but such a requirement would, in part, certainly insure due process to the people. *Watkins v. United States*, 354 U. S. 178 (1957).

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[1] Br. of United States, On Writ of Certiorari, p. 27.
Br. of United States, On Petition for Writ of Certiorari, p. 15.
Brief of Plaintiff-Appellee (C. A. 6th) pp. 7, 24.

The full power of the United States Senate has been visited upon the Petitioner to the extent that the Petitioner is to be deprived of eight months of his life; not through any lawful act of the Senate or its legally constituted authority, but through the over-zealous and officious act of a Committee investigator. To deprive the Petitioner of eight months of his life the Committee is not to be held to the proscriptions of Senate Resolution 74 or its own Rules of Procedure, however the Petitioner is to be held to the proscription of Section 1505 as that statute pertains to circumstances which are neither laid, nor presented by, the indictment against him.

The principle that demands that those procedures which curtail or adjust the freedom of every citizen with the requirements of the Government must be such a principle that it transcends the lack of perspicuity or the artless presentation of counsel or the personalities of the parties involved, if we are to survive as citizens of a free nation.

Every man who recognizes that our freedoms are a bequest or is remotely aware of the manner in which they were obtained to bequeath, must surely feel that now is the propitious time for this Court to express itself as the sole guardian of our heritage.

Today's investigator, armed with a void process, is tomorrow's dictator.[3] To allow an employee of a Senate

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[2] The 5th Amendment Today, Erwin N. Griswold, pp. 31-52, p. 49.

[3] *Braden v. U. S.*, 365 U. S. 431 (1961) *Dissent*.

Investigating Committee to determine, arbitrarily, the fate of our citizens is the reincarnation of the general warrants which were supplied to the officers of the Crown through Writs of Assistance.

The spirit of the flickering beacon that was ignited on the night of April 18, 1775 had smoldered in the hearts of such men as James Otis for more than a decade before, and few things breathed life into that flame as did the impassioned arguments of Otis against the overbearing, arbitrary power of the general warrants issued through the Crown.[1] Nothing insured the birth of this nation more than the English Crown's insistence upon its right to obtain Writs of Assistance as the odious engines of enforcement of its revenue laws.[2] Nothing has insured the eminence of this Nation more than our insistence upon the cherished freedom from the arbitrary and capricious exercise of the powers of the State against its citizens. Nothing can more surely or quickly squander our birthright than a toleration of the arbitrary exercise of the power of government over its citizens.[3]

Whether or not the Colonial insistence upon the abolition of Writs of Assistance was in fact the cornerstone upon which the United States has been built, certainly our present insistence upon the abolition of the general warrants of the illegal or unauthorized subpoena is the keystone to the arch that has led us from the tyranny of arbitrary power of the state to the freedom afforded by our constitution.

Should the Court afford this question less than its full consideration, it is most respectfully submitted that eight months of the petitioner's life will be a sullen epitaph to Lexington.

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[1] The Works of John Adams, Vol. X, p. 276.

[2] Quincy's Mass. Reports 452-4.

[3] *Jones v. Securities and Exchange Commission*, 298 U. S. 1 (1935) *Dissent*.

II.

On July 1, 1960 the Petitioner filed his notice of appeal in the United States Court of Appeals, Sixth Circuit, appealing from the judgment entered by the District Court on the verdict of the jury.

On November 13, 1960 Brief of Appellee was filed with the Court of Appeals. Petitioner's Brief was supported by the transcript of the Record of the trial filed with the Clerk of the District Court on July 1, 1960, the exhibits of the parties that are now a part of the Record here (308a-323a) and the original papers certifie to the Court of Appeals by the District Court on September 2, 1960. The Petitioner's designated Record on appeal included all of the transcript of the Record at the trial except the character witnesses of the Petitioner and those exhibits of the parties admitted into evidence at the trial and referred to above.

On or about November 21, 1960, the Government's attorneys, without notice to Petitioner's attorneys, recourse to the District Court or compliance with the Rule 36 of the Federal Rules of Criminal Procedure or Rule 75 of the Federal Rules of Civil Procedure, obtained the Certificate of the Court Reporter to the effect that the transcript of the Record filed on July 1, 1960 contained an error in transcription (385, 386).

On December 14, 1960, the Government's attorneys obtained a transcript of the pretrial discussions had in chambers of the trial court on May 18, 1960. This transcript was filed in the Court of Appeals as "additional supplemental certified record" (352-358).

The Petitioner then filed his motion in the District Court to strike the Certificate of the Court Reporter on the ground that if any error in transcription did exist, the Government must proceed in accordance with Criminal Rule 36 or Civil Rule 75. *Butler v. United States*, 188 F. 2d 24 (D. C. Cir. 1951); *Carter v. United States*, 168 F. 2d 310 (10th Cir. 1948). Combined with the foregoing motion, the Petitioner also sought to strike the transcript of the pretrial discussions on the ground that such discussions were not a part of the Record against the Petitioner in this case and in any event the presence of a reporter was for the Court's convenience.

On January 6, 1961, the trial court overruled both motions of the Petitioner on the ground that the Court of Appeals had exclusive jurisdiction over the Record on appeal under Rule 39 of the Federal Rules of Criminal Procedure.

On January 9, 1961, Brief of Plaintiff-Appellee, together with an Appendix was filed in the Court of Appeals. The Appendix of the Government contained (1) the certificate of the District Court Reporter stating that the original transcript of the Record was erroneously recorded (385); (2) the transcript of the pretrial discussions (352); (3) portions of the hearing before the Select Committee which were not admitted into evidence;[7] and (4) portions of the Interim Report of the Committee also which were not admitted into evidence (388).

On February 7, 1961 the Petitioner filed his motion with the Court of Appeals praying for an order to strike: First, the Certificate of the Court Reporter on the grounds that the Government had not complied with Criminal

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[7] The portions of the Hearings before the Select Committee which were included as a part of Appellee's Appendix in the Court of Appeals have been eliminated as a part of the Record in this Court.

Rule 36 or Civil Rule 75; second, the transcript of the pretrial discussions on the ground that the pretrial was not a part of the Record against the Petitioner; and finally, the portions of the Committee Hearing and the Interim Report on the ground that neither had been considered at any hearing in this case and were not a part of the evidence in the Record against the Petitioner.

On February 24, 1961 the Court of Appeals overruled the Petitioner's motion to strike the transcript of the pretrial discussions and reserved its ruling on the motion to strike the Certificate of the Court Reporter and the excerpts from the Committee Hearing and Interim Report until the argument on the merits of the case.

On March 4, 1961 the Petitioner filed its motion for leave to file a Supplemental Brief in the Court of Appeals on the ground that if the pretrial discussions were a part of the Record against the Petitioner a new trial was in order for the Petitioner under Criminal Rule 43 because at the time that the discussions were had the Petitioner was not present. The Court of Appeals granted the Petitioner leave to file his Supplemental Brief and granted five minutes additional time for argument of the reserved questions.

On July 6, 1961 following arguments on the merits of the questions presented by the Brief of Appellant only, the Court of Appeals affirmed the judgment of the District Court without disposing of the question reserved for ruling by its order of February 24, 1961.

The Petitioner does not now attempt to resurrect any question he might have presented to this Court concerning the failure of the Government to comply with Criminal Rule 36 or Civil Rule 75 or of inserting extraneous matters in the Record which were not part of the evidence in the case. The foregoing narration is set out only to show that although the Government has not turned "square corners" in what appears as an over-zealous effort to secure a conviction, the Petitioner has attempted to present to this Court for its consideration only those questions which are of vital concern to every citizen of the Nation.

Whether a void process can support an indictment and subsequent conviction under Title 18 U. S. C., Section 1505 is such a question of vital concern.

It is, therefore, most respectfully submitted that this question merits the consideration of the full Court.

CONCLUSION.

For the reasons set forth above, Petitioner respectfully prays the Court for its order granting a rehearing.

Respectfully submitted,
Edwin Knachel,
John G. Cardinal,
Attorneys for Petitioner.

Marshman, Hornbeck, Hollington,
Steadman & McLaughlin,
Of Counsel.

CERTIFICATE OF COUNSEL.

We, counsel for the Petitioner, hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for the purpose of delay.

Edwin Knachel,
John G. Cardinal.